

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Mueed Shahzad

Heard on: Wednesday, 22 March 2023

Location: Remotely via MS Teams at ACCA, The Adelphi, 1-11 John
Adam Street, London, WC2N 6AU

Committee: Mr Martin Winter (Chair)
Mr Peter Brown (Accountant)
Mr Nigel Pilkington (Lay)

Legal Adviser: Ms Tope Adeyemi (Legal Adviser)

**Persons present
and capacity:** Mr Ben Jowett (ACCA Case Presenter)
Ms Anna Packowska (Hearings Officer)

Summary: Allegations 1- 3(a) found proved
Allegation 3(b) N/A
Sanction: Severe Reprimand in combination with
disqualification from the FFA Financial Accounting
examination and a declaration of ineligibility to sit any
ACCA examinations for a period of 2 years.

Costs: £500.00

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INTRODUCTION

1. The Disciplinary Committee (“the Committee”) met to hear allegations against Mr Mueed Shahzad. Mr Shahzad did not attend and was not represented. The papers the Committee had before it consisted of a main bundle numbered 1 to 137, a service bundle numbered 1 to 16 and a tabled additional bundle numbered 1 to 2.

SERVICE OF PAPERS

2. The Committee first considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (“the Regulations”). The Committee took into account the submissions made by Mr Jowett on behalf of ACCA and the advice provided by the Legal Adviser.
3. Included within the bundle was the Notice of Hearing dated 21 February 2023, thereby satisfying the 28-day notice requirement, which had been sent to Mr Shahzad’s email address as it appears on the ACCA register. The Notice included correct details about the time, date and remote venue of the hearing, it also notified Mr Shahzad of the option to attend the hearing by telephone or video link and to be represented if he wished. Additionally, the Notice provided details about applying for an adjournment and the Committee’s power to proceed in his absence if considered appropriate. A delivery receipt dated 21 February 2023, confirming delivery of the Notice, was also provided.
4. The Committee also had sight of 2 emails and a call note. The emails were sent on 15 March 2023 and 17 March 2023 to Mr Shahzad’s email address and advised him again of the date and time of the hearing. The call note is dated 17 March 2023 and records that a call was made to Mr Shahzad at 11:00am. It is recorded that the phone initially rang but then disconnected after a few seconds.
5. The Committee, having considered the relevant documents, was satisfied that Notice had been served in accordance with the Regulations.

PROCEEDING IN ABSENCE

6. Having concluded that proper notice had been served in accordance with the rules, the Committee went on to consider whether to exercise its discretion to proceed in the absence of Mr Shahzad. The Committee took into account that Mr Shahzad had been sent a number of emails by ACCA's Hearings Officer asking if he would be attending the hearing with no response being received. Further, the Committee was of the view that an adjournment would serve no useful purpose as there was nothing to indicate that an adjournment would secure Mr Shahzad's attendance in future and no application for an adjournment had been made by him in any event.
7. Balancing the interests of Mr Shahzad against the interest of ACCA, the Committee concluded that in all the circumstances it was in the interests of justice that the matter proceed expeditiously notwithstanding the absence of Mr Shahzad. It was also noted that Mr Shahzad had made representations prior to the hearing which the Committee would take into account.

ALLEGATIONS

8. The allegations faced by Mr Shahzad are set out below.

Mr Mueed Shahzad ('Mr Shahzad'), a student member of the Association of Certified Chartered Accountants ('ACCA'), on 17 October 2020 and in relation to a Financial Accounting (FFA) computer-based examination (the 'Exam'):

1. Failed to comply with instructions issued by ACCA personnel, as per the "Information Sheet for On-Demand CBE Students sitting exams at home" in that he caused or permitted a third party to be present in the Exam room and thereby failed to ensure he was in a room with no-one else around him, contrary to Examination Regulation 2.
2. Caused or permitted the third party referred to in Allegation 1 to be in possession of and/or use a mobile phone in the Exam room during the Exam.

3. By reason of his conduct Mr Shahzad is:
 - (a) Guilty of misconduct pursuant to byelaw 8(a)(i); in respect of any or all of the matters set out at 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.

BACKGROUND

9. Mr Shahzad has been a registered student with ACCA since 01 October 2019. On 17 October 2020, Mr Shahzad sat a remotely proctored Financial Accounting (FFA) computer-based examination (the 'Exam') which was recorded. Later on the same day, the proctor submitted an incident report in which he set out a number of concerns (with reference to the video recording) arising from the examination that Mr Shahzad had sat.
10. The concern in essence amounted to a suspicion that there was a third person in the room with Mr Shahzad. The report highlighted the presence of shadows, whispering and the appearance of fingers to the right of Mr Shahzad. The proctor also stated that while he was trying to terminate the exam early, Mr Shahzad terminated it himself.
11. Mr Shahzad received notification of the incident report from ACCA on 11 November 2020. He sent a number of communications in response. On 12 November 2020 and 10 December 2021, he stated, amongst other things, the following: *"I want to clarify that there was no other person present in the room during the exam session. The incident was that a child of our guests accidentally came into my room who was immediately removed by my younger brother...."*. He added on 13 December 2020 that *"...i am innocent and I didn't do anything I thought that this was some misunderstanding and there is nothing to say more about my innocence...im not guilty"*.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

12. The Committee considered with care all the evidence presented and the submissions made by Mr Jowett. It accepted the advice of the Legal Adviser and bore in mind that it was for ACCA to prove its case and to do so on the balance of probabilities. The Committee did note that there was an error in the wording of ACCA's full name included in the allegations in that the name had been set out as the "*Association of Certified Chartered Accountants*" rather than the "*Association of Chartered Certified Accountant*". The Committee was of the view that this error amounted to a typo and that it had no material effect on the allegations and its consideration of them.

Allegation 1 – Proved

13. In determining this allegation, the Committee turned first to the wording of the information sheet and the examination regulations. It considered that the documents made it clear that it was a pre-examination requirement that Mr Shahzad be alone, the examination workspace area be clear of all materials for the duration of an examination and that Mr Shahzad had a duty to comply with those instructions.
14. The Committee then went on to consider whether Mr Shahzad caused or permitted a third party to be present in the examination room, thereby failing to ensure that no-one else was around. The Committee observed that during the first 40 minutes of the examination recording, whispering could be heard and an item, held by a hand which was not Mr Shahzad's, could be seen frequently coming into frame. This combination of activity led the Committee to conclude that there was more likely than not a third person in the room. Of further relevance was Mr Shahzad's lack of response to the obvious activity that was taking place. He did not respond or take any steps to stop it. Careful consideration was given to Mr Shahzad's comments that the activity was due to a child accidentally entering the area and being immediately removed. The Committee did not find this explanation to be credible bearing in mind the continuous presence of the third party which was inconsistent with an

explanation of a child momentarily entering the room, before being immediately removed.

15. Overall, the Committee concluded that not only was a third-party present in the exam room during the examination for significant period of time, but that Mr Shahzad permitted the third party to be present. The Committee reached this conclusion on the basis of the evidence which showed that no steps were taken by him to stop the obvious activity taking place. Furthermore, the Committee was satisfied that it could also be inferred from Mr Shahzad's inaction that he was complicit with the third party and that on the balance of probabilities he caused the third party to be in the exam room in the first instance.
16. The Committee therefore found allegation 1 proved.

Allegation 2 – Proved

17. As outlined, the Committee finds that Mr Shahzad both caused and permitted a third party to be present in the examination room. It also noted that the third party could be seen within the video footage to be holding an object.
18. The Committee considered whether the object was a mobile phone and determined that on the balance of probabilities it was. It reached this view bearing in mind the comments made by Mr Shahzad in his email to ACCA dated 20 July 2021 in which he stated that *"...you asked about the mobile phone that was shown in the pics I would say on this that this was just for knowing that what's the questions nature..."*. By providing reasons as to why the mobile phone was in the room, the Committee considered that Mr Shahzad had accepted that such a device was indeed present in the examination room. Further evidence supportive of a conclusion that the object was a mobile phone included the shape of the object, the presence of what appeared to be a lens and the inclusion of an Apple logo – with Apple being a well-known mobile phone brand. For all these reasons the Committee was satisfied that the object the third party was in possession of was a mobile phone.

19. The Committee then went on to consider whether Mr Shahzad caused or permitted the third party to be in possession of the mobile phone and it considered that he had. This view was reached on the same basis that it been concluded that Mr Shahzad had both caused and permitted the third party to be in the examination room. Namely, Mr Shahzad took no steps to stop the third party from being in possession of the mobile phone and thereby permitted the conduct. Additionally, the Committee were of the view that the phone was in use. This is due to the frequency in which it was appearing in the frame in a position consistent with one that would be adopted to take pictures of the screen of the device being used to complete the exam.
20. Finally, the Committee considered whether Mr Shahzad not only permitted the possession and use of the mobile phone but whether he caused it. The Committee considered that it was likely he did cause it to be used due to the absence of steps taken by him to stop what was occurring. The inference drawn from the evidence is that Mr Shahzad was complicit with the third party and therefore caused the mobile phone to be used by the third party.
21. Taking everything together the Committee was satisfied that there was sufficient evidence to find allegation 2 proved to the requisite standard.

Allegation 3(a) – Proved

22. The Committee was satisfied that Mr Shahzad's failure to follow the instructions provided to him in respect of the conduct of the exam amounted to misconduct and was serious. Adherence to exam instructions is necessary to maintain the integrity of the assessment process. A failure to adhere diminishes the integrity of the examination system and has the potential to undermine public confidence in ACCA qualifications and public confidence in ACCA as a regulator. With these points in mind, the Committee found allegation 3 proved.

Allegation 3(b)

23. Having found the behaviour amounted to misconduct, it was not necessary for the Committee to also consider whether Mr Shahzad was liable to disciplinary action, since this was alleged in the alternative.

SANCTIONS AND REASONS

24. The Committee considered what sanction, if any, to impose, taking into account all the information provided in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions, and the principle of proportionality. It had also listened to legal advice from the Legal Adviser, which it accepted.
25. 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.
26. 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.
27. The Committee considered whether any mitigating or aggravating factors featured in this case.
28. Regard was had to Mr Shahzad's lack of a disciplinary record and the isolated nature of the incident. These factors were deemed by the Committee to amount to mitigation. By way of aggravating factors, the Committee noted that Mr Shahzad had demonstrated no insight into the impact of his actions and did not acknowledge that what he was doing could potentially be harmful.
29. The Committee moved on to consider the range of potential sanctions. It concluded that neither an admonishment nor reprimand would adequately reflect the seriousness of its findings. The Committee considered that the public needs to be able to trust future ACCA members in their dealings and have

confidence in the ACCA as a regulator. There was also no evidence of any corrective steps taken by Mr Shahzad, to ensure future conduct did not occur and he had demonstrated no insight into his failings.

30. The Committee then considered whether a severe reprimand would be an appropriate sanction. The guidance for disciplinary sanctions stated that such a sanction may be appropriate where most of the following factors are present:

- a. The misconduct was not intentional and is no longer continuing, though the member may have acted recklessly;*
- b. Evidence that the conduct would not have caused direct or indirect harm;*
- c. Insight into failings;*
- d. Genuine expression of regret/apologies;*
- e. Previous good record;*
- f. No repetition of failure/conduct – it was an isolated incident;*
- g. Rehabilitative/corrective steps taken to cure the conduct and ensure future errors do not occur;*
- h. Relevant and appropriate references;*
- i. Co-operation during the investigations stage.”*

31. The Committee was aware that only a limited number of the factors were present, however it took the view that a severe reprimand was a sufficient and proportionate sanction if imposed in combination with two further sanctions. The first being Mr Shahzad’s disqualification from the FFA Financial Accounting examination in accordance with Regulation 13 (4) (f) of the Chartered Certified Accountants’ Complaints and Disciplinary Regulations 2014 (“the

Regulations”). ACCA had confirmed that Mr Shahzad sat the exam on 17 October 2020 but has not been formally notified of his result.

32. The second is a declaration that Mr Shahzad be ineligible to sit any examinations of the association for a period of two years in accordance with Regulation 13(4)(e) the Regulations. The two-year period will run from the date of this decision and was considered by the Committee to be an adequate period of time for Mr Shahzad to reflect upon his actions.
33. Consideration was given by the Committee to Mr Shahzad’s removal from the student register, however such a sanction was deemed to be disproportionate in all the circumstances. The Committee had particular regard to the fact ACCA had not alleged Mr Shahzad had acted dishonestly nor had evidence been adduced that he had gained any advantage through his conduct.

COSTS AND REASONS

34. The Committee had been provided with a 3-page cost schedule and a further 1-page cost schedule. It considered both documents together with the submissions made by ACCA. £7,881.50 in total was sought. The Committee found that in principle ACCA was entitled to claim its costs and therefore considered what if any amount Mr Shahzad should be directed to pay.
35. No detailed information had been provided by Mr Shahzad regarding his personal or financial circumstances, save for a short statement made by him in an email to ACCA dated 25 May 2022. In the email he stated the following: *“I am a poor student i fulfil my study expenses on my self”*.
36. The Committee accepted Mr Shahzad’s representations that he was a poor student and it also noted that he resided within a jurisdiction that had a modest local economy. Account however was also given to his assertion that he was funding the payment of ACCA’s examination fees himself. The Committee inferred from this that Mr Shahzad likely had some means he could use to make a contribution to the costs incurred by ACCA. Given these points, the

Committee considered that £500.00 was the reasonable and proportionate amount to award as contribution to the costs incurred by ACCA.

EFFECTIVE DATE OF ORDER

37. This Order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

Mr Martin Winter
Chair
22 March 2023