

## HEARING

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

#### REASONS FOR DECISION

<b>In the matter of:</b>	<b>Miss Amna Shah</b>
<b>Heard on:</b>	<b>Thursday, 23 March 2023</b>
<b>Location:</b>	<b>Remote via Microsoft Teams</b>
<b>Committee:</b>	<b>Mrs Helen Carter-Shaw (Chair) Mr Trevor Faulkner (Accountant) Mr Geoff Baines (Lay)</b>
<b>Legal Adviser:</b>	<b>Mr Robin Havard (Legal Adviser)</b>
<b>Persons present and capacity:</b>	<b>Ms Afshan Ali (ACCA Case Presenter) Ms Anna Packowska (Hearings Officer)</b>
<b>Observer:</b>	<b>Mr Akbar Khan (Appointments Board)</b>
<b>Summary</b>	<b>Removal from the student register</b>
<b>Costs:</b>	<b>£6,800</b>

#### ACCA



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## **PRELIMINARY APPLICATIONS**

### **SERVICE OF PAPERS**

1. The Committee had considered the following documents: a hearing bundle (pages 1 to 90); an incomplete Case Management Form (pages 1 to 21); a video recording of the exam session on 04 January 2021 and a service bundle (pages 1 to 22). The Committee had also considered legal advice which it had accepted.
2. The Committee had read the letter dated 23 February 2023 containing the Notice of Proceedings, sent on the same day by ACCA by email to Miss Shah. It had noted the subsequent emails sent to Miss Shah with the necessary link and password to enable Miss Shah to gain access to the letter, the video, and the documents relating to this hearing.
3. The Committee was satisfied that such emails had been sent to her registered email address in accordance with Regulation 22 of the Complaints and Disciplinary Regulations 2014 as amended ("CDR"). The Committee had noted that the emails had been delivered successfully. The emails, video, and the documents to which Miss Shah had access also contained the necessary information in accordance with CDR10.
4. Consequently, the Committee decided that there had been effective service of proceedings on Miss Shah in accordance with the CDR.

### **PROCEEDING IN ABSENCE**

5. On 14 March 2023, in the absence of any response from Miss Shah to the email of 23 February 2023, ACCA sent an email to Miss Shah at the registered email address asking her to indicate whether she intended to attend the hearing or whether she was content for the hearing to proceed in her absence, reminding her of the date of hearing. The email had been delivered successfully. There was no reply.

6. On 21 March 2023, ACCA initiated contact, and spoke with Miss Shah by phone. Miss Shah stated that she was not aware of the forthcoming hearing, nor had she received any of the emails that had been sent to her. However, on being asked to provide her email address, she provided the same address as the one recorded on ACCA's register and to which the emails of 23 February 2023 and 14 March 2023 had been sent. Furthermore, Miss Shah did not indicate that she had experienced any difficulties with receiving emails at that address.
7. In the course of the conversation, the purpose of the hearing was explained to Miss Shah, and she was encouraged to attend. Having made enquiries, Miss Ali also confirmed that, in the course of the conversation, Miss Shah would have been informed of the date and time of hearing. At no stage during the conversation did Miss Shah request an adjournment of the hearing.
8. Following that conversation ACCA sent a further email, on 21 March 2023, reminding Miss Shah of the date of hearing and providing her with a link to the documents before the Committee. In a separate email, a password was sent to Miss Shah enabling her to gain access to the documents.
9. On 22 March 2023, ACCA phoned Miss Shah's number on two occasions to find out if Miss Shah intended to attend but the phone went straight to voicemail and there was no option available to enable a message to be left.
10. On 22 March 2023, ACCA sent a further email to Miss Shah, confirming the attempts that had been made to contact her by phone and providing her with a link enabling her to join the hearing by video on 23 March 2023. Again, the Committee had noted that the email had been delivered successfully.
11. The Committee was satisfied that ACCA had done all that it could reasonably be expected to do to engage Miss Shah in the hearing. The Committee concluded that Miss Shah was aware of the hearing date and its importance but she had not requested an adjournment.

12. The Committee concluded that, having spoken to Miss Shah on 21 March 2023 and informed her of the date and time of the hearing, which was followed on the same day with ACCA sending a further email with a link to the material on which the Committee would base its decision, Miss Shah had voluntarily absented herself from the hearing, which she could have joined by telephone or video link. She had therefore waived her right to attend.
13. On balance, the Committee was satisfied that Miss Shah had received the emails contained within the service bundle. In addition to its findings at paragraph 6 above, the Committee also took into consideration the fact that, on 07 January 2021, using her registered email address, Miss Shah responded to an email from ACCA sent on 06 January 2021 regarding potential misconduct in the course of the exam on 04 January 2021.
14. The Committee was also satisfied that, taking account of the seriousness of the allegations, it was in the public interest to proceed. The Committee did not consider that any benefit would be derived in adjourning the hearing and no such application had been made.
15. Finally, the Committee considered that it was in a position to reach proper findings of fact on the evidence presented to it by ACCA.
16. The Committee ordered that the hearing should proceed in the absence of Miss Shah. In doing so, the Committee recognised that there was no obligation for Miss Shah to attend and it would not draw any adverse inferences from her non-attendance.

## **ALLEGATIONS**

Miss Amna Shah ("Miss Shah"), a student of the Association of Chartered Certified Accountants ("ACCA"):

1. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), failed to co-operate with the

investigation of a complaint, in that she did not respond to any or all of ACCA's correspondence dated:

- a) 11 May 2021;
- b) 08 June 2021;
- c) 01 July 2021.

2. On 04 January 2021, during and in relation to an FA1 Recording Financial Transactions examination (the 'Exam'):

- a) Contrary to Examination Regulation 16, communicated or attempted to communicate with a person other than an exam supervisor, invigilator or proctor, during the course of the Exam;
- b) Contrary to Examination Regulation 2, did not comply with the instruction provided by ACCA in the document "Information Sheet for On-Demand CBE Students sitting exams at home" in that she did not ensure that she was in a room on her own for the duration of the Exam.

3. By reason of her conduct in respect of any or all of the matters set out at Allegations 1 and/or 2, is:

- a) guilty of misconduct pursuant to bye-law 8(a)(i); or, in the alternative;
- b) liable to disciplinary action pursuant to bye-law 8(a)(iii).

## **DECISION ON FACTS, ALLEGATIONS AND REASONS**

### **Allegation 1(a), (b) & (c)**

17. In reaching its findings of fact in respect of allegation 1, the Committee relied on the email correspondence and documents contained in ACCA's bundle. The

Committee had taken account of the submissions of Ms Ali. The Committee also listened to legal advice, which it accepted.

18. On 16 October 2020, ACCA registered Miss Shah as a student. As such, she is, and was throughout the material time, bound by ACCA's byelaws and Regulations, including the Examination Regulations.
19. On 04 January 2021, Miss Shah commenced an on-demand FA1 Recording Financial Transactions examination (the 'Exam') remotely. The proctor (remote invigilator) in an Incident Report created on the day of the exam noted the student looking off screen during the exam.
20. On 06 January 2021, an investigation was commenced. ACCA wrote to Miss Shah informing her that an Incident Report had been received and that her case would be referred to the Professional Conduct Department. In that letter, sent to Miss Shah by email, Miss Shah was asked if she wished to make any comments in relation to the incident.
21. On 07 January 2021, Miss Shah responded, stating that when she was in the examination, the room in which she sat the exam was, "*fully locked*". She also stated that she was fully aware of the ethics of ACCA and that she had, "*not made any false/Wrongdoing in my examination*".
22. On 12 January 2021, Miss Shah sent an email to ACCA regarding issues relating to payment of her annual subscription.
23. On 25 January 2021, an, "On-Demand CBE Remote Exams Irregular Referral Form" was completed.
24. On 11 May 2021, ACCA sent a letter to Miss Shah's registered email address informing her of the details of the complaint and seeking her response by 01 June 2021. The letter contained a substantial amount of information and also a significant number of questions which Miss Shah was required to answer. No response had been received.

25. The letter of 11 May 2021 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."*

***This includes responding to the questions referred to above by the deadline of 01 June 2021.***

- (a) *Every relevant person is under a duty to co-operate with any Investigating Officer and any assessor in relation to the consideration and investigation of any complaint.*
  - (b) *The duty to co-operate includes providing promptly such information, books, papers or records as the Investigating Officer or assessor may from time to time require.*
  - (c) *A failure or partial failure to co-operate fully with the consideration or investigation of a complaint shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action...'*
26. On 08 June 2021, ACCA sent another letter to Miss Shah's registered email address reminding her of her obligation to co-operate with the investigation and seeking her response by 22 June 2021. No response had been received.
27. On 01 July 2021, ACCA sent another letter to Miss Shah's registered email address reminding her of her obligation to co-operate with the investigation and seeking her response by 08 July 2021. No response had been received.
28. The Committee found that the email address that was used by ACCA to communicate with Miss Shah had remained the same throughout the investigation. There was nothing to suggest that the emails had not been

delivered successfully and the Committee found that they had been received by Miss Shah. Indeed, it was the same address used by Miss Shah to communicate with ACCA on 07 January 2021.

29. In the circumstances, the Committee was satisfied that the emails of 11 May 2023, 08 June 2023 and 01 July 2023 had been delivered successfully to Miss Shah and she had failed to respond to those emails.
30. The Committee found that this failure to respond to correspondence amounted to a failure to cooperate with ACCA in the course of its investigation. On this basis, the Committee found allegation 1(a), (b) and (c) proved.

#### **Allegation 2(a) & (b)**

31. In reaching its findings in respect of allegations 2(a) and (b), the Committee relied upon the email correspondence and documents contained in ACCA's bundle which included the Incident Report provided by the proctor (i.e. a remote exam invigilator) prepared following the exam on 04 January 2021 and the transcript provided by UBIQUS. It had also viewed the video footage from the video taken on that day and considered the screenshots taken from the video footage as contained in the bundle.
32. The proctor's incident report states:  
  
*"During the session, the proctor noticed the test-taker was looking off-screen at 02:12:00 of the session recording. The proctor warned the test-taker and they complied. An intervention specialist was invited to the session and asked for a camera pan prior to ending the session since the test-taker was done with the exam".*
33. Prior to the exam starting, Miss Shah had been provided with a copy of the *"Information Sheet for On-Demand CBE Students sitting exams at home"*, which contained clear instructions from ACCA that prior to starting the exam



the student will “...*be located in a private, well-lit room with no one else around you.*”

34. The Committee was satisfied that the video footage of the exam provided evidence of a third party whispering to Miss Shah.
35. The translation of what was overheard during the exam and as set out below had been provided and verified by UBIQUS. In the absence of any evidence to the contrary, the Committee found that the translation was accurate.
36. The Chat box of the video showed that Miss Shah was reminded of the examination rules and asked if she agreed to abide by them. At 1.59 a.m. it shows that she agreed to abide by the examination requirements by typing “*I agree*” into the chat box.
37. The Committee accepted the evidence of ACCA and found the following facts regarding what was said, heard, and observed during the course of the exam:
  - 00:37:08 - 10 third party can be heard whispering and appears to say ‘cable/table’ whispering continues until 37:19.
  - 01:00:37 student looks off screen to the left.
  - 01:14:36 background noises, sounds as though items/objects are being moved.
  - 01:17:53 - 55 The testing area door is heard being opened and footsteps of third party heard. Shortly after a third party is heard whispering ‘35’.
  - 01:20:30 student looks off screen to the left.
  - 01:32:12 - 18 student smiles unclear whether student or third party whispers, ‘Patha nehi kaun sa’ in Urdu which translates to ‘don’t know which’.
  - 01:40:57 – 01:41:00, third party is heard whispering ‘94, 92’.

- 01:42:15 –22, student and third party are heard chuckling/laughing.
- 01:59:19, student is heard whispering ‘...200 yaad’. This translates to ‘remember 200’.
- 02:03:35 - 40, third party heard whispering ‘51, 30...35’.
- 02:04:01, third party heard whispering ‘...dekh’ which means ‘look’ the student is then seen looking off screen.
- 02:14:44 – 02:15:15, third party whispers ‘... ti yaar hai, muje confirm kar ke batao’ this translates to ‘...its ready, confirm and tell me’.
- Students responds with: ‘tum ne kiya bathiya tha’ this translates to ‘what did you tell’.
- Third party ‘... yeh dekh’ this means ‘... look at this’.
- Third party repeats again ‘yeh dekh yeh tera question hai, aur yeh mera question hai, dekh this translates to ‘look, this is your question and this is my question, look’. Student is then seen looking to the right whilst the third party says this.
- 02:15:09, third party whispers ‘tera question dekh le’ this translates to ‘look at your question’.
- Third party ‘Zaida ke 20 options hai’ this means ‘there’s at least 20 options’.
- Student is seen looking off screen whilst third party says this.
- 02:15:15, third party whispers, ‘yeh mera question dekh’ this translates to ‘look at my question’.
- 2:16:18, Student is asked by the proctor via the chat log to perform a camera pan. Just before performing a camera pan the third party is heard saying ‘darvasah bunde’ this means ‘door close’.

- 2:29:29 video ends.
38. The Committee found that the video evidence demonstrated clear and repeated instances of whispering at various stages throughout the exam from a third party who was in the same room in which Miss Shah was located. This was also consistent with the Committee's finding that on a number of occasions, Miss Shah looked away from the screen. The Committee also found that there was the sound of footsteps made by someone other than Miss Shah and also the noise of a door being closed by someone other than Miss Shah.
  39. Finally, the Committee was satisfied that certain of the words being whispered to Miss Shah were relevant to the exam she was sitting, which is principally a numbers-based exam.
  40. The Committee relied on the video footage and chat log in concluding that, throughout the course of the exam, Miss Shah was communicating with a third-party contrary to Examination Regulation 16.
  41. The Committee found that, by failing to comply with the clear instruction, from ACCA, that she must sit alone in the room during the exam, Miss Shah was in breach of Examination Regulation 2, which required exam candidates "*to comply in all respects with any instructions issued by the exam supervisor/s, invigilator/s, proctor/s, and any ACCA personnel before, during and at the conclusion of an exam*".
  42. On this basis, the Committee found allegations 2(a) and 2(b) proved.

### **Allegation 3(a)**

43. In respect of allegation 1, the Committee had found that, despite ACCA providing a number of reminders of her obligation to cooperate and warnings of potential consequences of her failure to do so, Miss Shah had failed to cooperate with ACCA and to respond to correspondence.

44. The Committee had taken into consideration that the email of 11 May 2021 contained a substantial amount of information and a significant number of detailed questions which Miss Shah was required to answer. In sending Miss Shah the emails of 08 June 2021 and 01 July 2021, ACCA had given Miss Shah every opportunity to respond substantively to its investigation.
45. The duty on 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.
46. The Committee found that the failure of Miss Shah to cooperate with her regulator amounted to misconduct in that such failure brought discredit to her, ACCA and the accountancy profession.
47. In respect of allegation 2, ACCA had found that Miss Shah had breached Examination Regulations 2 and 16; it considered such breaches to be very serious. The Committee considered that her conduct in the course of the exam was deliberate. The integrity of the exam system was fundamental to the reputation of ACCA and the trust that the public placed in it and the profession generally.
48. The Committee was satisfied that Miss Shah was guilty of misconduct in that such conduct could properly be described as deplorable. In the Committee's judgement, it brought discredit to Miss Shah, the Association and the accountancy profession.
49. On this basis, the Committee found allegation 3(a) proved.

**Allegation 3(b)**

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

## **SANCTION AND REASONS**

51. 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 also listened to the submissions of Ms Ali, and legal advice from the Legal Adviser which it accepted.
52. 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.
53. 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.
54. The Committee considered whether any mitigating or aggravating factors featured in this case.
55. The Committee accepted that there were no previous findings against Miss Shah. However, the Committee took into consideration the fact that, at the time the exams took place, Miss Shah had only been a student member since 16 October 2020 i.e. under three months before she sat the exam.
56. The Committee had no information regarding the personal circumstances of Miss Shah nor had it been provided with any testimonials or references as to Miss Shah's character.
57. The Committee had found Miss Shah to have been in breach of the Examination Regulations and that she had failed to engage and cooperate with ACCA during its investigation, both of which the Committee considered to be very serious.

58. The Committee had not been provided with any evidence of insight and held the absence of such evidence to be an aggravating feature.
59. Her lack of cooperation had also extended over a period of months and therefore it could not be described as an isolated incident.
60. 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.
61. 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.
62. Miss Shah had also failed persistently to cooperate with her regulator, ACCA, in respect of an investigation of potentially serious allegations. Her lack of engagement in relation to the investigation of her conduct during an exam represented conduct which was fundamentally incompatible with being a student member of ACCA. Her lack of engagement and the absence of any evidence of insight or contrition for her lack of cooperation, led the Committee to conclude that, currently, there was no guarantee that Miss Shah would behave in a manner expected of a member of ACCA.
63. Miss Shah had been found to have acted in breach of the Examination Regulations in a deliberate manner. The fact that the information provided to her in the course of the exam may have assisted her ran the risk that, in this way, Miss Shah may have gained her qualification when not competent to do so. This was conduct which was fundamentally incompatible with being a student member of ACCA. In the absence of hearing from Miss Shah, the Committee was not able to be satisfied that there was no risk of a repetition of such behaviour.

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

### **COSTS AND REASONS**

66. The Committee had been provided with a detailed costs schedule (pages 1 and 2) and a simple costs schedule (page 1) relating to ACCA's claim for costs.
67. The Committee concluded that ACCA was entitled to be awarded costs against Miss Shah, all allegations having been found proved. The amount of costs for which ACCA applied was £7,603.50. The Committee did not consider that the claim was unreasonable, but the hearing had taken less time than estimated which needs to be reflected in the amount awarded.
68. Miss Shah had not provided ACCA with any documentary evidence of her means. The Committee was satisfied that, in the correspondence sent to her, Miss Shah had been warned at the outset of the importance of providing details of her financial circumstances and of ACCA's intention to apply for costs if any or all of the allegations were established.
69. In the absence of any information from Miss Shah, the Committee approached its assessment on the basis that she was able to pay any amount of costs awarded against her.
70. In all the circumstances, and in exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £6,800.00.

## **EFFECTIVE DATE OF ORDER**

71. The Committee had considered whether the order should have immediate effect. However, ACCA did not seek such an order and, taking account of her status as a student, the Committee did not consider that she 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.
  
72. 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.

**Mrs Helen Carter-Shaw**  
**Chair**  
**23 March 2023**