

HEARING

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

In the matter of: Mr Zahir Azam

Heard on: Monday, 13 November 2023

Location: Virtual hearing via Microsoft Teams

Committee: Mr Maurice Cohen (Chair)
Ms Sue Heads (Lay)
Dr Beth Picton (Accountant)

Legal Adviser: Ms Jane Kilgannon

Persons present

and Capacity: Ms Michelle Terry (ACCA Case Presenter)
Miss Mary Okunowo (Hearings Officer)

Summary: Removal from the student register.

Costs: £5,000

1. The Disciplinary Committee (the Committee) convened to consider the case of Mr Zahir Azam (Mr Azam).
2. Ms Michelle Terry (Ms Terry) represented the Association of Chartered Certified Accountants (ACCA). Mr Azam did not attend the hearing and was not represented.

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3. The Committee had confirmed that it was not aware of any conflicts of interest in relation to the case.
4. In accordance with Regulation 11(1)(a) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 (the Regulations), the hearing was conducted in public.
5. The hearing was conducted remotely through Microsoft Teams.
6. The Committee had considered in advance the following documents:
 - a. Memorandum and Agenda (pages 1 to 2);
 - b. Hearing Bundle (pages 1 to 153);
 - c. A completed Case Management form (pages 1 to 13); and
 - d. Service Bundle relating to today's hearing (pages 1 to 18).

SERVICE OF PAPERS

7. The Committee considered whether the appropriate documents had been served on Mr Azam in accordance with the Regulations.
8. The Committee accepted the advice of the Legal Adviser, who referred it to Regulations 10 and 22 of the Regulations, and in particular the requirement that notice of the hearing must be served no later than 28 days before the date of the hearing unless there are exceptional circumstances.
9. The Committee noted the written notice of the hearing scheduled for today, 13 November 2023, that had been sent by electronic mail (email) to Mr Azam's registered email address on 16 October 2023. It also noted the subsequent emails sent to him with the necessary link and password to enable him to gain access to the letter and the documents relating to this hearing.

10. As the notice of hearing was sent by email, the Committee noted that service may be proved by confirmation of delivery of the notice, which had been provided to the Committee, and that the notice would be deemed as having been served on the day that it was sent, that is, 16 October 2023. On the basis of that documentation, the Committee was satisfied that the notice of hearing had been served on Mr Azam on 16 October 2023, 28 days before the date of today's hearing.
11. The Committee noted the contents of the notice of hearing and was satisfied that it contained all of the information required by Regulation 10.
12. The Committee concluded that service of the notice of hearing had been effected in accordance with Regulations 10 and 22 of the Regulations.

PROCEEDING IN ABSENCE

13. Ms Terry made an application that the hearing proceed in the absence of Mr Azam.
14. The Committee, having satisfied itself that the requirements of Regulations 10 and 22 had been complied with, went on to consider whether to proceed in the absence of Mr Azam.
15. The Committee took into account the submissions of Ms Terry. The Committee accepted and took into account the advice of the Legal Adviser, who referred it to Regulation 10(7) of the Regulations, the ACCA document 'Guidance for Disciplinary Committee hearings' and the relevant principles from the cases of *R v Jones* [2002] UKHL 5, and *GMC v Adeogba and GMC v Visvardis* [2016] EWCA Civ 162.
16. The Committee bore in mind that its discretion to proceed in the absence of Mr Azam must be exercised with the utmost care and caution.

17. The Committee noted that ACCA had sent a notice of hearing and further correspondence to Mr Azam at his registered email address, and that Mr Azam had responded as follows:
 - a. Mr Azam had indicated in his completed Case Management form dated 16 October 2023, that he did not intend to attend the hearing, would not be represented, and that he consented to the case being dealt with in his absence (page 141 of the Hearing Bundle);
 - b. Mr Azam had repeated, in his email dated 16 October 2023, his position that he would not be attending the hearing (page 153 of the Hearing Bundle); and
 - c. Mr Azam had confirmed, in his email dated 23 October 2023, “*Yes I have received the documents and I will not be attending the hearing and the committee can proceed in my absence*” (page 16 of the Service Bundle).
18. On the basis of the evidence set out above, the Committee was satisfied that ACCA had made reasonable efforts to notify Mr Azam about today’s hearing and that Mr Azam knew about the hearing. The Committee noted that Mr Azam had indicated that he did not intend to attend the hearing or be represented and had not applied for an adjournment of the hearing. As such, there was no indication that an adjournment would secure Mr Azam’s attendance on another date. Furthermore, Mr Azam had provided express consent for the hearing to be dealt with in his absence and he had provided written representations to the Committee. The Committee therefore concluded that Mr Azam had voluntarily absented himself from the hearing and that he had chosen to waive his right to make oral submissions in person at the hearing, preferring instead to submit written representations. The Committee was mindful that there is a public interest in dealing with regulatory matters expeditiously.
19. Having balanced the public interest with Mr Azam’s own interests, the Committee decided that it was fair and in the interests of justice to proceed in Mr Azam’s absence.

BRIEF BACKGROUND

20. Mr Azam became a student member of ACCA on 09 October 2019.
21. On 29 November 2020, Mr Azam sat ACCA's FBT - Business and Technology examination remotely.
22. In February 2023 ACCA received a referral from a whistle-blower, providing 30 photographs, 29 of which were of ACCA examination content. The header in each of the photographs showed the title of the examination as 'FBT – Business and Technology' and a candidate number that related to Mr Azam.
23. ACCA's Examination Production team has reviewed all of the photographs and confirmed that the examination content shown related to the remotely invigilated FBT – Business and Technology examination attempted by Mr Azam on 29 November 2020.
24. Mr Azam was formally notified of the ACCA investigation on 27 March 2023 and he replied on the same day, denying all of the allegations.
25. There was a webcam recording of Mr Azam's examination attempt on 29 November 2020 but, because the matter was reported to ACCA more than two years after the examination attempt, the recording taken had expired and so was not available to the Committee.

ALLEGATIONS

Allegation 1

On 29 November 2020, Mr Zahir Azam, an ACCA student:

- (a) ***Used, or caused or permitted a third party to use, an unauthorised item, during ACCA's FBT – Business and Technology remotely invigilated exam, to take photographs of one or more exam questions, contrary to Exam Regulations 6 and/or 14.***

- (b) Caused or permitted one or more of the photographs referred to in Allegation 1a, to be shared with a person or persons unknown, contrary to Exam Regulation 10.***

Allegation 2

Mr Zahir Azam's taking and sharing of photographs of questions from a live ACCA exam (timed and unseen paper) as outlined at Allegation 1 above:

- (a) Was dishonest in that the taking and retaining of the photographs of the exam questions could potentially assist him if he had had to resit the same exam and thereby provide him with an unfair advantage and/or***
- (b) Was dishonest in that sharing the photographs with another or other exam candidates sitting the same exam could provide them with an unfair advantage, or in the alternative;***
- (c) Demonstrates a failure to act with integrity, or in the further alternative,***
- (d) Was reckless in that he failed to have any or sufficient regard to the possibility that the sharing of photographs of exam questions with any other ACCA student (whether directly or indirectly) would provide them with an unfair advantage if they were intending to sit the same exam.***

Allegation 3

By reason of any or all of the facts set out at Allegations 1 and 2 above, Mr Zahir Azam, 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), in respect of breaches of the Exam Regulations as set out in allegation 1 above.***

DECISION ON ALLEGATIONS AND REASONS

ADMISSIONS

- 26. There were no admissions and so ACCA was required to prove all matters alleged.

EVIDENCE AND SUBMISSIONS OF ACCA

- 27. Ms Terry took the Committee through the documentary evidence relied upon by ACCA. In particular, Ms Terry highlighted:
 - a. The 29 photographs; and

 - b. The witness statement of Person A confirming that all 29 photographs contain content from Mr Azam's FBT Technology and Business examination attempt on 29 November 2020.

- 28. Ms Terry brought the Committee's attention to Exam Regulations 6, 7, 10 and 14 which provide:
 - a. *"You are not permitted to use mobile phones, electronic communication device, camera, or any item with smart technology functionality in your examination room. These are known as "unauthorised items" and are taken into the examination room at the candidate's own risk" (Exam Regulation 6);*

- b. *“If you breach exam regulation 6, it will be assumed that you intended to use the ‘unauthorised items’ to gain an unfair advantage in the exam. In any subsequent disciplinary proceedings, you will have to prove that you did not intend to use the ‘unauthorised items’ to gain an unfair advantage in the exam”* (Exam Regulation 7(b));
 - c. *“You may not engage in any improper conduct designed to assist you in your exam attempt or provide any improper assistance to any other exam entrant in their exam attempt”* (Exam Regulation 10); and
 - d. *“You must not copy, photograph or reproduce in any manner exam questions. You are also strictly prohibited from distributing or seeking to exploit for commercial gain unauthorised copies of exam questions”* (Exam Regulation 14).
29. Ms Terry submitted that the evidence provided shows that the 29 photographs originated from Mr Azam’s examination attempt on 29 November 2020. She submitted that they could only have been taken by an item such as a mobile phone, electronic communication device, camera, or some other item with smart technology functionality, and that such items are classed as *“unauthorised items”* under Exam Regulation 6.
30. Ms Terry explained that where a student is found to be in breach of Exam Regulation 6, Exam Regulation 7(b) provides that there is a rebuttable presumption that they intended to use the unauthorised item to gain an unfair advantage in the examination. Therefore, if the Committee were to find that Mr Azam had used an unauthorised item during his examination attempt on 29 November 2020, the burden of proof would rest on Mr Azam to prove that he did not use the item to gain an unfair advantage in the examination.
31. Ms Terry submitted that the fact that the photographs of Mr Azam’s examination attempt on 29 November 2020 ended up in the hands of a third-party whistleblower means that at least one other person had possession of the photographs taken during that examination attempt. She asserted that, as the photographs originated from Mr Azam’s examination attempt, Mr Azam must have (either

directly or indirectly) shared or permitted someone else to share those photographs. As such, Ms Terry submits that Mr Azam has breached Exam Regulation 10.

32. In the absence of a plausible alternative explanation from Mr Azam, ACCA asserts that Mr Azam must have taken or allowed the photographs to be taken and shared, in order to gain an unfair advantage either for himself or for others. ACCA submits that seeking such an unfair advantage is dishonest conduct. In the alternative, Ms Terry submitted that the conduct lacked integrity or was reckless.
33. Ms Terry submitted that Mr Azam's conduct had brought discredit to himself, ACCA, and the wider accountancy profession. She submitted that it was so serious as to amount to misconduct.

EVIDENCE AND SUBMISSIONS OF MR AZAM

34. Mr Azam provided written submissions to the Committee.

35. On 27 March 2023 at 15:34, Mr Azam stated:

"I have reviewed evidence and everything. This email came to me as a shock because when I was giving exam I followed all the procedures and everything. I was alone in the room but no third party electronic devices or anyone. I don't understand how these photographs are taken and then it came out public. I passed my exam without anyone's help and I didn't take these photographs as I was sitting in front of the camera and there was no one else with me.

Maybe it is possible that someone is trying to make false accusations on my name. They edited these pictures and used my number on it, I am not sure but this is a possibility as I know that I have not taken these photographs and I have not taken any advantage to pass my exam.

If Acca have any doubts over this then you can nullify my result and I will take the exam in any centre in Pakistan because I know I have not done anything

illegal. And I don't know how these pictures got public because I have not done this. I am very shocked about this situation. I am studying hard and things like this make it difficult to concentrate on my further studies" (page 65 of the Hearing Bundle)

36. On 27 March 2023 at 16:02, Mr Azam stated:

"1. I have seen the document and I don't know how it's got my name. There's a possibility that a pic is edited and used my name.

2. I deny these allegations because I didn't use any device to take pictures because I was in front of the computer all the time.

3. I deny these allegations that I didn't share any photographs to anyone.

4. I am shocked about these photographs because I have no idea how these photographs were taken.

5. I don't know who had these photographs and with whom they were shared too. I just came to know about these after 2 years and I am shocked.

6. Before the exam the examiner checked my room and I was alone.

7. No one was with me because during exam no one is allowed.

8. I didn't know about these photographs.

9. I didn't share any of these photographs.

10. How can I share these photographs if I didn't even capture them and I don't have these photographs with me.

11. I wasn't seeking any assistance during exam.

12. I passed my exam without any assistance or without anyone helping me. I didn't pay anyone anything.

13. Like I said before I just came to about these photographs right now. I had no idea that these existed and with whom they were available with.

14. I didn't receive any payment.

15. FBT exam is all theoretical and these is no numericals or calculations involved that's why it took short time to complete the exam.

16. I didn't receive any answer.

17. Yes I read all the guidelines about exam regulations.

18. No I respect the Acca guidelines about exams and rules and I have not done anything illegal.

19. I don't have any photographs of any examination.

20. *I don't know how to explain but I am sure I have not taken these photographs or anyone else and I didn't share them with anyone.*

21. *I have passed my exams with honesty and I respect the law and everything I want to continue my future with Acca. I am shocked about these photographs and I have not taken them or taken any assistance to pass my exam. I have followed all the rules that I was told my examiner. I showed my room my desk space and everything” (pages 67 to 68 of the Hearing Bundle).*

37. In his completed Case Management form dated 16 October 2023, Mr Azam stated:

“[...] I do not admit to any allegations. [...] I attended this exam in a hostel where my class fellow was staying and I used his laptop and room and everything. I had no one in the room during exam and my cell phone was not near me. I had no idea how these pics came out. In some of those pic my account number and name can clearly be seen. If I had took these pic why would I not at least hide my name. Why would I expose my self and ruin my career just to help someone else. I feel like I was used and someone set up a secret camera and took these pics without me knowing and used me” (page 143 of the Hearing Bundle); and

“I am not planning to attend the hearing but I will write a formal statement of my defense when required” (page 148 of the Hearing Bundle).

38. In an email dated 16 October 2023, Mr Azam stated:

“On the day of my exam I went to my class fellows hostel room where I attended my exam. I didn't have suitable condition at my home that's why I used his room and I used his laptop. He helped me setup everything. Once the exam started I was all alone in the room and I had no mobile phone or any electronic device near me through which I could have taken the pictures. I was looking at the screen all the time. There's no way I could have taken those pictures without the examiner noticing.

Secondly the pictures which got leaked had my name and number shown clearly. If I was involved in this or I was sending these pictures to others

students at least I would hide my name I am not that stupid. Why would I help other students and risk my own career just to give some minor advantage to someone. The fact that my name and number is shown proves that this happened without me knowing and I wasn't involved. The only possible way all this could have happened is by some sort of secret camera or anything this is my guess because I can't think of anything else.

It's been a long time a student who helped me with room and laptop I don't even know where that guy is as he was from other city because he was staying in hostel. And the place where I used to take classes I haven't been to that place in years because I am studying online now.

This is all I have to say. This has already affected me alot mentally because my study is ruined and my career is on stop. I would like to continue my journey with ACCA and avoid taking online examination because of the issues I face. I have no other option other than ACCA" (page 153 of the Hearing Bundle).

DECISIONS AND REASONS OF THE COMMITTEE

39. The Committee considered all of the evidence and submissions before it.
40. The Committee accepted the advice of the Legal Adviser, which included reference to the applicable burden and standard of proof, and the interpretation of the terms dishonesty, a failure to act with integrity, recklessness and misconduct.

Allegation 1a – proved

41. In relation to Allegation 1(a), having carefully reviewed the 29 photographs disclosed by the whistle-blower, the Committee noted that they each related to Mr Azam's ACCA examination attempt on 29 November 2020. This was clear from both the content of the questions and the fact that they included Mr Azam's candidate number (relying upon the unchallenged evidence of Person A). Contrary to Mr Azam's submissions in his written representations, the Committee noted that none of the photographs showed Mr Azam's name. The

Committee noted that the images all appeared to have been captured within the initial half an hour of the two-hour examination, because the time shown on the photographs as remaining of Mr Azam's examination ranges from 01:59:51 to 01:29:13, a period of approximately 30 minutes.

42. The Committee noted that the majority of the 29 photographs (27 in total) included in the hearing bundle appeared to have been taken by a device separate to the computer upon which the examination had been undertaken in that they were photographs of the screen, rather than screenshots taken via the computer itself. This is because they were slightly off-centre in their view of the examination content, and parts of the edge of the computer screen can be seen.
43. The Committee noted that Mr Azam denied this matter, stating that he did not take the 29 photographs, that there was no-one in the room with him when he took the examination and that he has no idea how the photographs came into existence. The Committee noted Mr Azam's explanation that he had taken the examination in a friend's room at a hostel, using the friend's laptop computer, because his own accommodation was unsuitable for sitting a remote examination.
44. The Committee considered that it was unlikely that the photographs could have been taken during Mr Azam's examination attempt without his cooperation, either as the person taking the photographs or in allowing the photographs to be taken by another person. The Committee noted that the majority of the photographs appear to have been taken some short distance from the computer screen upon which the examination was being taken, in that there is a high-quality image of the computer screen captured, and they are stamped with words that indicate that a mobile phone camera device has been used to capture the image. The Committee considered it unlikely that such clear and precise images of the computer screen could have been captured by a mobile phone device covertly and without Mr Azam's prior knowledge or discovery at the relevant times.

45. If Mr Azam's account had been true, and the photographs had been taken by another person without his knowledge, the Committee would have expected Mr Azam to do everything he could to assist ACCA in identifying that person so that they could be questioned by the ACCA investigation team. The Committee noted, however, that Mr Azam not made any attempt to identify the person whose room and device he had used to sit the examination. Such information could have assisted ACCA in tracking down the person whom Mr Azam appears to imply must have taken the photographs in question covertly. However, he had failed to provide such details. He had simply stated that *"It's been a long time a student who helped me with room and laptop I don't even know where that guy is as he was from other city because he was staying in hostel. And the place where I used to take classes I haven't been to that place in years because I am studying online now"*. The Committee found that lack of candidness suggested that Mr Azam may be seeking to conceal either his own role in the taking of the photographs or the identity of another person who had involvement in the taking of the photographs.
46. Taking all of these matters into account, the Committee found, on the balance of probabilities, that it was more likely than not that Mr Azam had used, or allowed another person to use, an unauthorised item to take photographs of the examination questions.
47. Accordingly, the Committee found Allegation 1(a) proved.

Allegation 1(b) – proved

48. In relation to Allegation 1(b), the Committee noted that the 29 photographs had been shared with at least one other person, the whistle-blower. However, there was no direct evidence as to how those photographs had reached the whistle-blower.
49. Reflecting on its earlier finding that Mr Azam was likely to have either taken or permitted the taking of the photographs in question, the Committee considered that it followed that he must also have been involved in the sharing of the

photographs for them to end up in the hands of another person (whether he did the sharing himself or by permitting someone else to do it).

50. The Committee noted Mr Azam's denial of this matter. However, for the same reasons as set out above, found his explanation to be implausible and improbable.
51. Accordingly, the Committee found Allegation 1(b) proved.

Allegation 2(a) – proved

52. In relation to Allegation 2a, the Committee noted that Exam Regulation 7(b) created a rebuttable presumption that if Mr Azam had used (or allowed to be used) an unauthorised item during the examination, that his motivation for doing so was to gain an unfair advantage in the examination (either for himself or another person). The Committee considered therefore whether Mr Azam had proved that he did not have such a motivation.
53. The Committee noted Mr Azam's explanation that he simply did not take the photographs, was not aware of them and so had no intention to use the photographs to gain an unfair advantage in the examination. Indeed, Mr Azam had gone on to say that he needed no assistance to pass the examination and would be happy to re-sit the examination in a centre-based examination if needed in order to prove that.
54. The Committee considered that, given that Mr Azam had acknowledged that he was aware that taking photographs of examination content was not permitted, the fact that he took photographs or allowed them to be taken did indicate a motivation to gain an unfair advantage. The Committee was not persuaded that Mr Azam was not aware of the photographs being taken. It considered that it was highly unlikely that the photographs could have been taken without Mr Azam being aware of it because he had set up and undertaken the remote examination himself, using a location and equipment that he had chosen. The Committee considered the most likely motivation for the taking of the photographs (or allowing them to be taken) was for Mr Azam to gain an

unfair advantage for himself or another person. They could be used for revision ahead of any re-sit or be used to assist other people planning to sit the examination in the future. No alternative, plausible explanation had been put forward by Mr Azam. The Committee therefore considered that Mr Azam had not rebutted the presumption that his conduct was intended to gain an unfair advantage for himself or another person.

55. The Committee applied the test for dishonesty set out in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67.
56. Applying the first stage of the test, the Committee had regard to Mr Azam's previous good character and considered that it made it less likely that he would have had a dishonest state of mind at the relevant time or since been untruthful about his state of mind at that time. However, bearing in mind its findings in relation to Allegation 1(a), and its findings as to Mr Azam's likely motivation, the Committee considered that Mr Azam's subjective state of mind at the relevant times was that he knew that he should not be taking photographs or allowing the taking of photographs during the examination, but he nevertheless took those photographs (or allowed them to be taken). He therefore knew that what he was doing was wrong and was against the rules set out for the taking of the examination.
57. Applying the second stage of the test, the Committee considered that Mr Azam's conduct would be viewed by ordinary decent members of the public to be dishonest by objective standards because it amounted to an attempt to gain an unfair advantage in a professional examination.
58. Accordingly, the Committee found Allegation 2(a) proved.

Allegation 2(b) – proved

59. In relation to Allegation 2(b), the Committee applied the test for dishonesty set out in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67.

60. Applying the first stage of the test, the Committee had regard to Mr Azam's previous good character and considered that it made it less likely that he would have had a dishonest state of mind at the relevant time or since been untruthful about his state of mind at that time. However, bearing in mind its findings in relation to Allegation 1(b), the Committee considered that Mr Azam's subjective state of mind at the relevant times was that he knew that sharing photographs of an examination (or allowing them to be shared) was wrong and against the examination rules, but he nevertheless had chosen to do so.
61. Applying the second stage of the test, the Committee considered that Mr Azam's conduct would be viewed by ordinary decent members of the public to be dishonest by objective standards because it amounted to an attempt to gain an unfair advantage in a professional examination.
62. Accordingly, the Committee found Allegation 2(b) proved.
63. Given its findings in relation to Allegations 2(a) and 2(b), it was not necessary for the Committee to consider the alternative matters set out at Allegations 2(c) and 2(d).

Allegation 3a – proved

64. In relation to Allegation 3(a), the Committee considered the seriousness of Mr Azam's conduct set out at Allegations 1(a), 1(b), 2(a) and 2(b). The Committee referred back to the evidence that it had seen and its earlier findings of fact.
65. The Committee considered that Mr Azam's conduct was not only a breach of the ACCA Examination Regulations but also departed significantly from what was proper in the circumstances and brought discredit to Mr Azam, ACCA and the accountancy profession. The conduct risked the academic integrity of the examination and therefore risked undermining proper professional standards and public confidence in the ACCA and its qualifications.
66. The Committee noted that Mr Azam had sought to conceal from ACCA the true course of events in the examination room.

67. The Committee noted that Mr Azam's conduct in taking and sharing examination questions (or allowing this to happen) had been designed to afford him or another person an unfair advantage and was dishonest. As such, the Committee found it to be conduct that fell far below the standards expected of a student member of ACCA.
68. For these reasons, the Committee concluded that Mr Azam's conduct at Allegations 1(a), 1(b), 2(a) and 2(b), taken individually and collectively, was serious enough to amount to misconduct.
69. Given the Committee's finding in relation to Allegation 3a, it was not necessary for it to consider the alternative matter set out at Allegation 3b.

SANCTION AND REASONS

70. In reaching its decision on sanction, the Committee took into account the evidence that it had already seen, its earlier findings and the submissions of Ms Terry. Mr Azam had not provided any written representations specifically in relation to the sanction stage of the proceedings.
71. Ms Terry submitted that the Committee may consider that the premeditation and planning that must have been involved in Mr Azam's dishonest conduct was an aggravating feature of the case.
72. Ms Terry submitted that the Committee may consider that a mitigating feature of the case is that there are no previous regulatory findings against Mr Azam. However, she noted that Mr Azam's misconduct had occurred only about a year after his registration as a Student Member of ACCA.
73. The Committee accepted the advice of the Legal Adviser, who referred it to Regulation 13(4) of the Regulations, relevant caselaw and the ACCA document 'Guidance for Disciplinary Sanctions'. The Committee bore in mind that the purpose of any sanction was not to punish Mr Azam, but to protect the public,

maintain public confidence in the profession and maintain proper standards of conduct, and that any sanction must be proportionate.

74. When deciding on the appropriate sanction, the Committee carefully considered whether there were any aggravating and mitigating features in this case.
75. The Committee considered the following matters to be aggravating features of the case:
 - a. The conduct amounted to deliberate dishonesty, motivated by a desire to obtain an unfair advantage; and
 - b. A lack of insight.
76. In relation to a lack of insight, the Committee carefully considered the guidance set out in the case of *Sawati v General Medical Council* [2022] EWHC 283 (Admin). In the context of this case, the Committee considered that its finding that there was a lack of insight was not placing unfair reliance on Mr Azam's rejected defence of honesty for the following reasons:
 - a. The Committee was satisfied that Allegations 1a, 1b, 2a and 2b taken together – dishonest conduct in taking and sharing photographs of the content of a professional examination – amounted to primary allegations of dishonesty in that they were allegations of deceitful conduct, as opposed to allegations of some other kind of conduct that could be done in an honest or a dishonest way;
 - b. The Committee noted that Mr Azam had denied an objectively verifiable fact, namely that he had taken photographs or allowed photographs to be taken during the examination;
 - c. The Committee noted that Mr Azam was not only denying a dishonest state of mind, but rather his involvement in any way in taking and sharing

the photographs or permitting the taking and sharing of the photographs;
and

- d. The Committee considered that Mr Azam's defence was itself a lie.
77. The Committee considered the following to be mitigating features in this case:
- a. It appears to have been a single, isolated incident; and
 - b. Mr Azam has had no previous regulatory findings made against him (although the Committee placed little weight on this feature given the brief amount of time – approximately one year – that Mr Azam had been on the ACCA student register before the misconduct occurred).
78. The Committee did not note any expression of remorse on the part of Mr Azam.
79. Given the lack of remorse and insight, the Committee considered there to be a significant risk of repetition of the misconduct.
80. No professional or character testimonials were presented for the consideration of the Committee.
81. The Committee noted that Section E2 of the 'Guidance for Disciplinary Sanctions' document indicated that:
- a. Dishonesty, even when it does not result in direct harm and/or loss undermines trust and confidence in the profession;
 - b. 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; and

- c. The Committee should bear these factors in mind when considering whether any mitigation presented by the student member is so remarkable or exceptional that it warrants anything other than removal from the student register.

- 82. The Committee considered the available sanctions in increasing order of severity.

- 83. The Committee first considered whether to take no further action but considered that such an approach was not appropriate given the seriousness of the misconduct.

- 84. The Committee considered that neither admonishment, reprimand nor severe reprimand would be appropriate, because the nature of the conduct was deliberate and there was no evidence of remorse or insight. The Committee considered that these three sanctions would be insufficient to mark the seriousness of the misconduct, to provide adequate protection of the public and to address the wider public interest.

- 85. The Committee considered that removal from the student register was the appropriate and proportionate sanction in this case because Mr Azam's conduct:
 - a. Was a serious departure from professional standards;
 - b. Was fundamentally incompatible with being a Student Member;
 - c. Had the potential to have an adverse impact on members of the public if trust was undermined in ACCA qualifications and the profession of accountancy;
 - d. Included dishonesty; and
 - e. Demonstrated a lack of insight into the seriousness of the conduct and the consequences thereof.

86. The Committee did not consider the mitigating features of the case were so remarkable or exceptional so as to warrant anything other than removal from the student register.
87. The Committee was mindful that the sanction of removal from the student register was the most serious sanction that could be imposed and recognised that it could have negative consequences for Mr Azam in terms of his reputation and financial circumstances. However, the Committee considered the sanction to be proportionate in the circumstances, given the seriousness of the misconduct, the need to protect the public, and the wider public interest in upholding proper professional standards and maintaining public confidence in ACCA and the accountancy profession.
88. Accordingly, the Committee decided to remove Mr Azam from the student register.
89. The Committee decided that, given the circumstances of the case and the ongoing risk to the public, it was in the interests of the public that the order for removal from the student register to have immediate effect.
90. The Committee did not deem it necessary to impose a specified period before which Mr Azam could make an application for re-admission as a student member.

COSTS AND REASONS

91. Ms Terry, on behalf of ACCA, applied for Mr Azam to make a contribution to the costs of ACCA in bringing this case. Ms Terry applied for costs in the sum of £6,168. The application was supported by a schedule breaking down the costs incurred by ACCA in connection with the hearing.
92. Mr Azam did not provide the Committee with a completed Statement of Financial Position, nor did he provide any written representations specifically in relation to the costs stage of the proceedings.

93. The Committee accepted the advice of the Legal Adviser who referred the Committee to Regulation 15(1) of the Regulations and the ACCA document 'Guidance for Costs Orders' (September 2023).
94. The Committee was satisfied that ACCA was entitled to costs in principle and had been justified in investigating these matters. Having reviewed the schedule, the Committee considered that the costs claimed appeared to have been reasonably and proportionately incurred. Furthermore, without any information about Mr Azam's financial and personal circumstances, the Committee found no basis for reducing the costs payable on the grounds of Mr Azam's ability to pay or other personal circumstances.
95. In light of the fact that the hearing today had taken slightly less time than had been estimated in the ACCA schedule, the Committee determined that it would be appropriate to reduce the amount of costs awarded accordingly.
96. Taking all of the circumstances into account, the Committee decided that Mr Azam should be ordered to make a contribution to the costs of ACCA in the sum of £5,000.

INTERIM ORDER

97. The Committee was informed that there was an Interim Order in place in relation to Mr Azam and the allegations under consideration at today's hearing. As the proceedings were now complete, the Committee decided, in accordance with Regulation 12(5)(b) of the Regulations, to rescind the Interim Order.

ORDER

98. The Committee made the following order:
 - a. Mr Azam shall be removed from the ACCA student register;

- b. Mr Azam shall make a contribution to ACCA's costs in the sum of £5,000;
and
- c. The Interim Order in relation to Mr Azam is rescinded.

EFFECTIVE DATE OF ORDER

- 99. In accordance with Regulation 20(1)(b) of the Regulations, the Committee decided that, in the interests of the public, the order relating to removal from the ACCA student register shall take effect immediately.
- 100. In accordance with Regulation 20(2) of the Regulations, the orders relating to costs and the interim order shall take effect immediately.

Mr Maurice Cohen
Chair
13 November 2023