

HEARING
DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF
CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Muhammad Nouman Khan
Heard on:	15 November 2023
Location:	ACCA, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU. Virtual hearing using Microsoft Teams.
Committee:	Ms Kathryn Douglas (Chair) Dr David Horne (Accountant) Ms Sue Heads (Lay)
Legal Adviser:	Mr David Marshall
Persons present and capacity:	Mr Adam Slack (ACCA Case Presenter) Ms Lauren Clayton (Hearings Officer) Mr Muhammad Nouman Khan (Student) Mrs Hamida Begum (Interpreter for Urdu)
Summary:	Dishonesty proved. Removed from the student register
Costs:	£1,500

1. The Committee heard an allegation of misconduct against Mr Khan. Mr Slack appeared for ACCA. Mr Khan was present and represented himself.
2. The Committee had a main bundle of papers containing 123 pages, a service bundle containing 22 pages, and a tabled additional bundle of 10 pages.

PRELIMINARY APPLICATIONS

3. At the start of the hearing Mr Khan applied for the entire hearing to be in private. The Committee treated his application as being in private. [PRIVATE]
4. Mr Slack did not oppose the application in so far as it related to preserving the confidentiality of Mr Khan's medical history. Otherwise, he opposed it in the interests of open justice. The legal adviser gave advice about the Committee's powers under Regulation 11(1) which the Committee accepted. He emphasised the importance of the principle that hearings take place in public as far as possible. The Committee decided that any evidence concerning Mr Khan's medical history would be heard in private and the identity of Mr Khan's witness would be anonymised in any public version of the transcript or decision.
5. Mr Slack applied to amend the allegation to correct what he submitted was an obvious mistake. Allegation 5 was an allegation of misconduct. As drafted it referred to allegations 1 to 3 as showing misconduct, but in fact there were four allegations of dishonest conduct. Mr Khan did not object to amending allegation 5 to refer to allegations 1 to 4, instead of 1 to 3. The Committee made that amendment.

ALLEGATIONS/BRIEF BACKGROUND

6. Mr Khan has been a student of ACCA since 2015 and has taken many ACCA exams. On 7 March 2023 he sat ACCA's Strategic Business Leader remotely invigilated exam. Exams of this kind are taken in a private room, often in the candidate's home, and are monitored in various ways including observing the video from the candidate's laptop camera.
7. On 9 March 2023 ACCA received an email from someone described as a whistle-blower. This person said:

I am an ACCA student. I had my SBL exam on 07.03.23 at 2:30 pm PST.

I want to draw your attention to this crucial matter, I came to know on 08.03.23 that some students attempting exam remotely took pictures of the questions from the side of their laptops and desktops and then shared them with their friends or freelancers who, write the answer and they cheat their answer [sic].

8. The email attached a photograph apparently showing the screen of a laptop during an ACCA exam. Examination of the photograph led ACCA to conclude that this was a photograph of Mr Khan's screen when he took the exam on 7 March 2023. A further, similar, photograph was emailed on 18 March 2023. Mr Khan did not dispute that these were both photographs of his screen while he was taking the exam.
9. Mr Khan faced the following allegations (as amended):

Allegation 1

On 07 March 2023, Mr Muhammad Nouman Khan, an ACCA student:

- a) Used, or caused or permitted a third party to use, an unauthorised item, during ACCA's Strategic Business Leader ("SBL") remotely invigilated exam, to take photographs of one or more of the exam questions contrary to Exam Regulation 5a, and/or 12.
- b) Caused or permitted the photographs referred to in Allegation 1a, to be shared with a person or persons unknown, contrary to Exam Regulation 10 and/or 14.

Allegation 2

Mr Khan's conduct was:

- a) In respect of allegation 1 a, dishonest in that the taking and retaining of the photographs of the exam questions could potentially assist him if he had to resit the same exam and thereby provide him with an unfair advantage and/or
- b) In respect of allegation 1 b, 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,
- d) In the further alternative to allegations 2a), 2b) and/or 2c) above, such conduct was reckless in that Mr Khan 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

In the alternative to allegations 1a and/or allegations 2a — d, Mr Khan failed to report to ACCA, that on 7 March 2023, a third party had taken photographs of ACCA exam questions, contrary to Exam Regulation 15.

Allegation 4

Mr Khan's conduct at allegation 3 above:

- a) Was dishonest in that he knew he had a responsibility to report to ACCA any breaches of exam content once known to him and he did not, or in the alternative;
- b) Demonstrates a lack of integrity

Allegation 5

By reason of any or all of the facts at allegations, 1-4, Mr Khan 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 allegations 1 a, 1 b, and/or 3 above.

DECISION ON FACTS/ALLEGATIONS AND REASONS

10. Mr Slack did not call any witnesses and relied on the documentary evidence. Based on the evidence of an Exam Production Technician employed by ACCA, the Committee was satisfied that the two photographs showed Mr Khan's screen during the course of the exam in question, as Mr Khan admitted. They must have been taken by a mobile phone or camera or similar device which would have been 'an unauthorised item' in the terms of the Examination Regulations.
11. The two photographs showed a single exam question which was displayed on two separate pages of the laptop display. The first photograph showed the first part of the question. The second photograph showed a separate page with the remainder of the question. This strongly suggested that the purpose of the photographs was to capture a complete question. That would have required coordination between the person taking the picture and Mr Khan who was operating the laptop. The photographs were clearly taken from well to the side of the laptop screen. This made it difficult to read the question, but not impossible. However, doing it this way would avoid observation from the laptop's camera. It therefore suggested someone familiar with remote invigilation.
12. Given the angle, it seemed unlikely that Mr Khan could have taken the photographs himself. If someone else took them, the Committee considered that it would not have been possible without Mr Khan's knowledge and cooperation. Once the photographs had been taken they were published or circulated in such a way as to enable another exam candidate to download them. That strongly suggested that Mr Khan had permitted the taking of, and made use of, the photographs. Therefore, on the face of it, the evidence was sufficient to establish, on the balance of probabilities, that Mr Khan 'used, or caused or permitted a third party to use, an unauthorised item, to take photographs of one or more of the exam questions'.
13. The Committee then considered Mr Khan's explanation for the photographs and their publication. The core of Mr Khan's version of events was that a friend of his had come into his room and taken the photographs without him asking. The friend was named to the Committee and gave a brief informal written

statement which was not dated or signed. Mr Khan had said that he would call the friend to give evidence but in fact they did not attend. The friend had no connection with ACCA or accountancy. In the statement the witness said they were concerned about the stress Mr Khan was under. They said they took a photograph of the exam screen, without explaining why. They did not deal with the fact that there were actually two exam screens. They said they informed Mr Khan of the photography 'during his break' in the exam. They said he was furious, 'admonished' the witness and told the witness to delete the pictures immediately, which was done. Mr Khan gave a number of explanations of what happened which the Committee found to be inconsistent with each other and also inconsistent with what the friend had said. By the end of his oral evidence Mr Khan's position was that he knew nothing about the pictures until after the exam when he switched on his phone, and they were downloaded. He said in evidence that he did not ask his friend to delete them until this point. Mr Khan had previously written in his responses to ACCA that he became aware of the photographs and requested their deletion during his break in the exam. Mr Khan said he had never been aware of the exam regulations despite the many exams he had taken. However, he repeatedly emphasised that the photographs had been deleted, showing that he knew they should not have been taken.

14. The Committee found Mr Khan to be evasive in his answers to questions as well as inconsistent. It found his version of events to be implausible. It noted that he had no credible explanation for how the pictures taken had found their way into the possession of another candidate. He speculated that one of his Google accounts might have been 'open' and accessed by someone else, but the Committee did not accept that other candidates might have tried to access his account on the chance that he might have taken pictures of the questions contrary to the rules.
15. The Committee rejected Mr Khan's version of events. The Committee found allegations 1(a) and (b) proved.
16. Given the Committee's findings on the facts, it was satisfied that his conduct was dishonest. He knew that taking photographs of the questions was not allowed. The only plausible reason for doing so would be to help him or another person to cheat. The Committee found allegations 2(a) and (b) proved. The

following allegations were in the alternative, so the Committee did not need to consider them: allegations 2(c) and (d), 3 and 4.

17. With regard to allegation 5(a), the Committee was satisfied that by his dishonesty Mr Khan was guilty of misconduct. Allegation 5(b) was in the alternative and did not have to be considered.

SANCTION(S) AND REASONS

18. Having found the allegations proved, the Committee went on to consider what sanction, if any, to impose. In doing so it took into account ACCA's Guidance for Disciplinary Sanctions and bore in mind the principle of proportionality.
19. The Committee first sought to identify aggravating and mitigating factors.
20. An allegation of exam cheating is serious by its nature. Cheating or attempting to cheat or assisting another person to cheat undermines the integrity of the exam process and erodes the public's confidence in the system of ACCA qualification. Furthermore, by distributing the photographs Mr Khan had potentially helped other students to cheat.
21. As to mitigating factors, Mr Khan was of previous good character and had cooperated with the investigation. However, he had demonstrated no genuine remorse or insight into the consequences of his action. His submissions mainly dealt with the effect which a sanction would have on him, having spent seven years trying to qualify for ACCA. He took two exams on the day in question and had he passed them he would have completed all his ACCA exams. The Committee accepted that its findings could have a devastating effect on him and his family but that was a consequence of his actions and not a point in mitigation.
22. In view of the seriousness of the misconduct in this case the Committee was satisfied that it was necessary to impose a sanction.
23. The Committee considered the available sanctions in order of seriousness.
24. In relation to the sanction of admonishment few of the suggested factors were present. The same applied to the next sanction, reprimand. The Guidance stated that the sanction of reprimand would usually be applied in situations

where the conduct is of a minor nature. That was not the case here.

25. The Guidance stated that the next sanction, severe reprimand could be applied to serious misconduct where 'there are particular circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public, and there is evidence of the individual's understanding and appreciation of the conduct found proved.' In this case none of these factors were present.
26. The Committee next considered the sanction of removal from the student register. It considered that Mr Khan's behaviour was fundamentally incompatible with registration as an ACCA student. Many of the factors set out in the Guidance were present. The Committee was satisfied that removal was the minimum sanction it could impose.

COSTS AND REASONS

27. Mr Slack applied for costs totalling £6,567.50.
28. The Committee considered that the proceedings had been properly brought and that ACCA was entitled, in principle, to a contribution to its costs. The figures claimed and time spent were reasonable.
29. The Committee considered Mr Khan's ability to meet an order for costs of this amount. He had submitted a statement of means showing that his income was [private] month and his outgoings were nearly as much. It accepted that he had incurred large debts in Pakistan in order to travel to the UK to pursue his studies. The Committee considered that it would cause undue hardship for him to have to pay the full costs and assessed his contribution at £1,500.

EFFECTIVE DATE OF ORDER

30. The Committee considered that Mr Khan could pose a continuing risk by remaining on the student register during the appeal period. He might be able to gain access to other examination materials or pass himself off as someone who was nearly qualified. The Committee determined that its order should take immediate effect.

ORDER

31. The Committee **ordered** as follows:
- (a) Mr Muhammad Nouman Khan shall be removed from the student register with immediate effect
 - (b) Mr Khan shall make a contribution to ACCA's costs in the sum of £1,500.

Ms Kathryn Douglas
Chair
15 November 2023