

HEARING

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

In the matter of: Mr Jay Mahesh Badge

Heard on: Monday, 9 October 2023

Location: Remotely Via Microsoft Teams

Committee: Mr Michael Cann (Chair)
Dr Beth Picton (Accountant)
Mr Nigel Pilkington (Lay)

Legal Adviser: Mr Alastair McFarlane

**Persons present
and capacity:** Mr Ben Jowett (ACCA Case Presenter)
Miss Nicole Boateng (Hearing Officer)

Costs: £7000

Summary: Allegations 1, 2, 3a, 4 and 5a found proved;
Removed from the student register.

1. ACCA was represented by Mr Jowett. Mr Badge did not attend and was not represented. The Committee had before it a Bundle of papers, numbered pages 1 – 154, an Additional Bundle, numbered pages 1 – 4, and a Service Bundle, numbered pages 1-20, and copies of 2 videos.

SERVICE/ PROCEEDING IN ABSENCE

2. Having considered the Service Bundle, and the Notice of Hearing the Committee was satisfied that Notice of the hearing was served on Mr Badge in accordance with the Complaints and Disciplinary Regulations 2014 (amended 1 January 2020) (“CDR”).
3. The Committee next considered whether it was in the interests of justice to proceed in absence of Mr Badge. The Committee accepted the advice of the Legal Adviser. The Committee was mindful that Mr Badge had a right to attend the hearing and to participate and that the discretion to proceed in his absence must be exercised with the utmost care and caution.
4. The Committee noted that ACCA’s notice was sent on 11 September 2023 to Mr Badge’s email address, offered him the opportunity of attending via video or telephone link, with the costs being met by ACCA. There was no response to the Notice and the Hearings Officer attempted to telephone Mr Badge on 28 September 2023 and again on 3 October 2023 to ascertain whether he would be attending the hearing. On both occasions there was no answer. A further email was sent on 5 October 2023 sending the link for the video hearing. The Committee was satisfied that all reasonable attempts have been made to secure Mr Badge’s attendance/participation at the hearing. The Committee was satisfied that Mr Badge has voluntarily waived his right to attend and was not persuaded that any adjournment would increase the chance of Mr Badge attending or participating further in the case. On the information before it and bearing in mind its duty to ensure the expeditious conduct of its business and the wider public interest, the Committee was satisfied that it was in the interests of justice to proceed in the absence of Mr Badge. The Committee reminded itself that his absence added nothing to ACCA’s case and was not indicative of guilt.

ALLEGATIONS

Mr Jay Mahesh Badge (“Mr Badge”), an ACCA student:

1. On 13 November 2021, during and in relation to a scheduled remotely invigilated FMA Management Accounting examination (“the Exam”):

- a) Used an unauthorised item, namely a mobile phone, contrary to Examination Regulation 5(a).
- b) Intended to use the mobile phone to gain an unfair advantage in the Exam, contrary to Examination Regulation 6(b).
- c) Engaged in conduct designed to assist him in the Exam attempt by having the mobile phone in his possession, contrary to Examination Regulation 10.
- d) Used the mobile phone to take photograph(s) of the Exam, contrary to Examination Regulations 12 and 14.

2. On 22 November 2021, in an email response to a notification from ACCA's CBE Delivery Team that Mr Badge was observed taking a photograph of the Exam using a mobile phone, inaccurately represented the reason for the presence of the mobile phone which he stated he had picked up wrongly instead of a charger for the laptop.

3. The conduct alleged at Allegation 2 was:

- a) Dishonest, in that he knew the explanation was false and/or intended to mislead; or, in the alternative,
- b) Demonstrates a failure to act with integrity.

4. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), Mr Badge failed to co-operate with the investigation of a complaint, arising out of his conduct during the Exam, in that he failed to respond to any or all of ACCA's correspondence sent to him on:

- a) 20 May 2022;
- b) 10 June 2022; and
- c) 7 July 2022.

5. By reason of his conduct, Mr Badge is:

- a) Guilty of misconduct pursuant to byelaw 8(a)(i) in respect of any or all of the matters set out at Allegations 1 to 4 above; or in the alternative,
- b) Liable to disciplinary action pursuant to byelaw 8(a)(iii) in respect of the matters set out at Allegations 1 and 4 above.

AMENDMENT OF ALLEGATION

- 5. ACCA made an application under Regulation 10(5) to amend 4c from 7 July to 6 July, which it contended was a simple typographical error. The Committee, having noted the advice of the Legal Adviser, accepted the amendment was a typographical error and was satisfied that there was no prejudice to Mr Badge, who was notified in advance on 6 October of the proposed amendment.

BACKGROUND

- 6. On 13 November 2020, Mr Badge registered as an ACCA student.
- 7. Mr Badge undertook a remotely invigilated FMA Management Accounting examination on 13 November 2021.
- 8. The Exam's duration was 120 minutes and was hosted on the ProctorU platform. Before starting the Exam, ACCA contended that Mr Badge confirmed he had "read and understood ACCA's exam regulations and agree to abide by them".
- 9. The Exam was terminated by the online proctor / invigilator as "the test taker [Mr Badge] was observed taking a photo of the exam using their phone". He was informed that his exam had been terminated via the ProctorU chat function, and an incident report was completed.
- 10. On 16 November 2021 Mr Badge was informed that the matter would be referred to ACCA's Investigation Department.

11. On 22 November 2021, Mr Badge sent an email to ACCA's Complaints Assessment email address stating:

"I received your mail regarding the use of mobile during the exam time. I will take this opportunity to clarify that I have not used the cell phone for taking any photograph during (sic) examination time. It was kept aside, and I picked it up wrongly instead of the charger of the laptop which was interpreted as taking the photograph. I apologise for it but assure that it was an unintentional mistake. So, I Hereby (sic) request you to please allow me to appear for re-exam".

12. ACCA relies on the video recording of the exam. The Exam footage was reviewed on the ProctorU platform and offline. The Exam footage is split over two videos: the "First video" (camera footage) which has a duration of 1 hour, 2 minutes and 22 seconds and the "Second video" (camera footage) which has a duration of 45 minutes 15 seconds. The two corresponding screen recordings were also provided, and therefore, there are four videos in total.
13. In the First video at about, 00:36:46 and in response to the online proctor's instruction to *"place your cell phone behind you out of reach and do not access it until after you have completed the exam unless otherwise instructed. Then, using your webcam, show me where it has been placed..."*, Mr Badge holds up his mobile phone which is black, rectangular in shape and with a camera and he appears to place it in his bag.
14. Later on in the First video, at about, 00:50:00 and shortly after being instructed by the online proctor to enter his ACCA registration ID, date of birth and access code, Mr Badge is seen leaning to his left and moving out of the camera frame. The online proctor subsequently asks Mr Badge, *"What did you get just now? ...Show me your arms and ears ..."* The Exam paper is released and/or begins after 00:54:10 (approx.) on the First video.
15. The Second video captured Mr Badge's conduct during the Exam and after it is terminated. At or about, 00:04:59 – 00:05:05, Mr Badge leans or moves to the left such that only his ear and right shoulder are visible in the camera frame. In the Second video, ACCA submitted that Mr Badge is seen looking down and/or to his left repeatedly at various times; it sounds as if a mobile phone is

vibrating and/or giving off a notification; and Mr Badge is seen holding up a black rectangular object which is believed to be his mobile phone.

16. ACCA prepared a chronology of what it contended were the relevant observations from the Second video:

Phone vibration and/or notification

- 00:13:24 – 00:13:56– *Sounds as if a mobile phone is vibrating. Student appears to look down to his left and smile (subtle)...Faint sound as if door swinging open – visible shadow on whiteboard. Also sounds as if a phone is vibrating (again)– student looks to his right...*
- 00:15:28 – 00:15:45– *The edge of a black object is visible on screen and at the end on both sides' fingers are visible. A vibration sound can also be heard. Student then appears to look down. Sounds as if a phone is vibrating.*
- 00:22:30 – 00:22:52– *Audible phone notification sound. Sounds like a phone vibration.*
- 00:23:29 – 00:23:32– *Audible phone notification sound.*
- 00:26:45 – 00:27:00– *Rectangular black object visible on screen and appears to be held by the student. Audible phone notification sound and phone vibration.*

Black rectangular object held up in front of the screen.

- 00:17:10 – 00:17:15 – *Rectangular black object visible and appears to be held by the student.*
- 00:21:20 – 00:21:31 – *Sounds as if a phone is vibrating. Rectangular black object visible on screen and appears to be held by the student.*
- 00:22:53 – 00:22:59 – *Rectangular black object visible on screen and appears to be held by the student.*
- 00:25:41 – 00:25:55 – *Rectangular black object visible on screen and appears to be held by the student.*
- 00:27:40 – 00:27:56 – *Rectangular black object visible on screen and appears to be held by the student.*

17. ACCA also produced a summary of the recorded interactions between the online proctor and the student:

Online proctor's instructions regarding "taking a picture of the exam content" and exam termination.

• 00:28:44 – 00:28:59 – Rectangular black object visible on screen and appears to be held by the student.

*At or about this time, the online proctor contact's Mr Badge via the chat function:
2:32 AM Michael B.: May I know why you are taking a picture of the exam Content?*

2:33 AM Jay Badge: sir my exam uncomplet

2:34 AM Jay Badge: uncomplet exam

2:35 AM Jay Badge: no

2:38 AM Jay Badge: hallo

• 00:29:00 (approx.) – Exam is terminated.

• 00:40:00 (approx..) – Mr Badge is informed via the chat function that his Exam has been terminated:

2:42 AM Ma.Rose Villora: ... I am here to inform you that we have terminated the exam due to a breach in academic integrity in accordance with ACCA policy. Please contact ACCA for further instructions.

2:44 AM Ma.Rose Villora: Please get your phone and delete the photo you've taken during the exam.

2:44 AM Jay Badge: ok

2:44 AM Ma.Rose Villora: Go ahead and show me your phone

2:44 AM Ma.Rose Villora: Please delete the photos you taken in front of the camera • 00:41:45 – 00:42:00 – Mr Badge retrieves bag from the left. Takes phone out from bag pocket, black, rectangular phone. Flips it round to both sides.

• 00:42:40 – 00:42:48 – Mr Badge holds phone up and seemingly shows his photo album and apparently deletes photos taken during the exam.

18. On 20 May 2022 the Investigations Officer sent an email and letter to Mr Badge's registered email address via ACCA's case management system. He was informed of the allegations against him and was asked to respond to questions regarding his conduct during the Exam with reference to the timestamps in the video chronologies. Mr Badge was also sent (i) a Bundle containing the exam guidelines, regulations and supporting evidence and (ii) the video footage of his Exam (the First and Second video).

19. On 23 May 2022, the Investigations Officer sent a follow up email via Outlook to Mr Badge's registered email address notifying him that he should have received an encrypted/password protected email via ACCA's case management system
20. No response was received to ACCA's correspondence dated 20 May 2022 and 23 May 2022 and ACCA contend that there was no email failure notification or any auto-response from Mr Badge's registered email address.
21. In addition to the correspondence dated 20 May 2022, the Investigations Officer sent two chaser emails (on 10 June 2022 and 7 July 2022) to Mr Badge's registered email address, reminding him of his duty to co-operate with an ACCA complaint investigation as per his obligations under the Complaints and Disciplinary Regulations, Regulation 3 (1).
22. No response was received to ACCA's correspondence dated 10 June 2022 and 7 July 2022. There was no email failure notification or any auto-response from Mr Badge's registered email address. On 24 June, 7 July and 13 July 2022, the Investigations Officer called Mr Badge at his ACCA registered phone number. Although each call was successfully placed, it has not been possible to speak to Mr Badge about the investigation.

ACCA's SUBMISSIONS

23. ACCA submitted that Allegation 1 referred to above is capable of proof by the documents in the evidence bundle. In particular ACCA relied on the evidence in the second video, the observations of the online proctor, the chat log instructions regarding the taking of photographs of the exam content and subsequent request to delete photographs of the exam. Further, in the email from Mr Badge dated 22 November 2021, it was contended that Mr Badge appeared to accept that he did have a mobile phone with him during the Exam and that he tried to "pick up" the mobile phone during the Exam albeit, he suggests this was accidental. ACCA contended that Mr Badge used the "unauthorised item", mobile phone with camera to photograph ACCA exam content.

24. ACCA contended that Mr Badge photographed ACCA exam content with the intention of gaining an unfair advantage in the Exam and that the Committee can rely on the presumption that Mr Badge intended to gain an unfair advantage by the operation of Exam Regulation 6 b.
25. Further, in contacting ACCA to state that he did not use his mobile phone to take photographs of the Exam, ACCA submitted that Mr Badge was attempting to mislead ACCA's investigation and that this was dishonest.
26. ACCA further submitted that Mr Badge has failed to co-operate with the investigation of a complaint in that he failed to respond fully or at all to any or all of ACCA's correspondence dated 20 May 2022, 10 June 2022 and 6 July 2022 and that Mr Badge has a duty to co-operate in accordance with the Complaint and Disciplinary Regulations, regulation 3(1). In regard to Allegation 4, ACCA relies on the fact that no responses have been received from Mr Badge.

MR BADGES SUBMISSIONS

27. Mr Badge's response to ACCA'S Investigation Department on 22 November 2021 is set out in paragraph 10 above.

DECISION ON ALLEGATIONS AND REASONS

28. The Committee accepted the advice of the Legal Adviser.
29. The Committee heard that there had been no previous findings against Mr Badge and accepted that it was relevant to put his good character into the balance in his favour.

DECISION ON FACTS

30. The Committee carefully considered all the documentary evidence it had received, as well as the submissions of Mr Jowett on behalf of ACCA and those written by Mr Badge. It reminded itself to exercise caution as it was working from documents alone.

Allegation 1

- 1. On 13 November 2021, during and in relation to a scheduled remotely invigilated FMA Management Accounting examination (“the Exam”):**
 - a) Used an unauthorised item, namely a mobile phone, contrary to Examination Regulation 5(a).**
 - b) Intended to use the mobile phone to gain an unfair advantage in the Exam, contrary to Examination Regulation 6(b).**
 - c) Engaged in conduct designed to assist him in the Exam attempt by having the mobile phone in his possession, contrary to Examination Regulation 10.**
 - d) Used the mobile phone to take photograph(s) of the Exam, contrary to Examination Regulations 12 and 14.**

31. The Committee was satisfied on the basis of the video footage which recorded interactions between Mr Badge and the online proctor, that Mr Badge did use his mobile phone during the exam on several occasions. It was also satisfied that the mobile phone was an unauthorised item and that it was an appropriate case to apply the presumption under Regulation 6 b that Mr Badge intended to use the mobile phone to gain an unfair advantage. The Committee was further satisfied that his conduct was designed to assist him. It was satisfied that he used his mobile phone to take photographs of the exam. It rejected Mr Badge’s assertions in his November 2021 email as implausible and inconsistent with the clear evidence on the video footage. The Committee concluded on the evidence that Mr Badge was not seriously undertaking the exam but rather clicking through the questions at some speed and photographing the questions. It considered that the most likely reason for this was to assist him and potentially others in a future sitting of the exam. It was satisfied that this was conduct that fell within the prohibition contemplated by the Exam Regulations. It was there for satisfied that Mr

Badge had breached Examination Regulations 5a, 6b, 10, 12 and 14. Accordingly, the Committee found Allegation 1 proved in its entirety.

Allegation 2

- 2. On 22 November 2021, in an email response to a notification from ACCA's CBE Delivery Team that Mr Badge was observed taking a photograph of the Exam using a mobile phone, inaccurately represented the reason for the presence of the mobile phone which he stated he had picked up wrongly instead of a charger for the laptop.**
32. Given its findings in allegation 1, the Committee was satisfied that Mr Badge's email of 22 November 2021 inaccurately represented the reason for the presence of the mobile phone. It rejected that he accidentally picked it up in error charger for his laptop and was satisfied that he was using the mobile phone to gain an unfair advantage in exam. This was an inaccurate representation. Accordingly, Allegation 2 was proved.
- 3. The conduct alleged at Allegation 2 was:**
 - a) Dishonest, in that he knew the explanation was false and/or intended to mislead; or, in the alternative,**
 - b) Demonstrates a failure to act with integrity.**
33. The Committee first considered whether Mr Badge's conduct in Allegation 2 was dishonest in that he knew the explanation was false and/or intended to mislead. It specifically assessed his likely state of mind as to the facts when he wrote that email. It was satisfied from the clear evidence on the video footage that Mr Badge must have known that his explanation was false and was intended to mislead ACCA. It had no hesitation in concluding that this would be regarded as dishonest conduct by the standards of ordinary decent people. Therefore, the Committee found Allegation 3a proved, and did not go on to consider the alternative of want of integrity under Allegation 3b. The Committee would add that the charging of Allegation 3a in relation to Allegation 2, was unusual and in the circumstances added little to the

mischief under Allegation 1, which really amounted to cheating in an exam, even though dishonesty had not been alleged in relation to Allegation 1.

Allegation 4

4. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), Mr Badge failed to co-operate with the investigation of a complaint, arising out of his conduct during the Exam, in that he failed to respond to any or all of ACCA's correspondence sent to him on:

- a) 20 May 2022;**
- b) 10 June 2022; and**
- c) 6 July 2022.**

34. In relation to Allegation 4, the Committee was satisfied that under paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, there was an obligation on Mr Badge to co-operate fully with ACCA in the investigation of any complaint. It was satisfied that Mr Badge made no response to ACCA's correspondence requesting her co-operation on the 20 May 2022, 10 June 2022 and 6 July 2022. There was no evidence before the Committee in this case to amount to a defence to the obligation on professionals to co-operate with their regulator as expressed in Regulation 3(1). It was therefore satisfied that these non-responses amounted to failures as Mr Badge had a duty to respond. Therefore, he breached the obligation under the Regulations and that Allegation 4 was proved.

Allegation 5

5. By reason of his conduct, Mr Badge is:

- a) Guilty of misconduct pursuant to byelaw 8(a)(i) in respect of any or all of the matters set out at Allegations 1 to 4 above; or in the alternative,**
- b) Liable to disciplinary action pursuant to byelaw 8(a)(iii) in respect of the matters set out at Allegations 1 and 4 above.**

35. The Committee next asked itself whether the proven breaches of the Exam Regulations and the dishonest conduct in relation to his email when he gave a false explanation, amounted to misconduct.
36. The Committee had regard to the definition of misconduct in byelaw 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Mr Badge's actions brought discredit on him, the Association, and the accountancy profession. It was satisfied that his conduct, including the dishonest representation, reached the threshold for misconduct. Not cheating in exams is a fundamental obligation on any professional.
37. The Committee was also satisfied that failing to co-operate with your regulator was deplorable and amounted to misconduct. In the light of its judgment on Allegation 5(a) no finding was needed upon Allegation 5(b).

SANCTIONS AND REASONS

38. The Committee noted its powers on sanction were those set out in Regulation 12(3). It had regard to ACCA's Guidance for Disciplinary Sanction and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate. It considered the available sanctions in ascending order and applied the principle of proportionality. It accepted the advice of the Legal Adviser.
39. The Committee considered that the proven conduct in the exam in this case was very serious. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. Trust and honesty are fundamental requirements of any professional. Such conduct and cheating in a professional exam by a member of the accountancy profession undermines its reputation and public confidence in it. Failing to co-operate with your professional regulator is similarly breach of a fundamental obligation on any professional.
40. The Committee considered that his previous good character and young age were the mitigating factors and that the exam conduct happened on only one occasion. In relation to aggravating factors, the Committee considered the

cheating was likely of a planned nature. The Committee noted that there was no apology or remorse expressed and no insight or understanding into the seriousness of the behaviour.

41. Given the Committee's view of the seriousness of his conduct, it was satisfied that notwithstanding his young age, the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to highlight to the profession and the public the gravity of the proven misconduct.
42. The Committee determined that his behaviour was fundamentally incompatible with Mr Badge remaining on the student register of ACCA and considered that the only appropriate and proportionate sanction was that he be removed from the student register.

COSTS AND REASONS

43. ACCA claimed costs of £7,687.00 and provided a detailed Schedule of Costs. It noted Mr Badge is now an 18-year-old student, but he had not provided a formal statement of means. It was unable to draw conclusions as to his means. It had regard to ACCA's Guidance for Costs Orders. The Committee decided that it was appropriate to award costs in this case but noted that the hearing time had taken less than estimated and therefore made a reduction to reflect this. It concluded that the sum of £7,000 was appropriate and proportionate. Accordingly, it ordered that Mr Badge pay ACCA's costs in the amount of £7,000.00.

EFFECTIVE DATE OF ORDER

44. This order shall take effect from the date of the expiry of the appeal period unless notice of appeal is given prior to the expiry of that period, in which case it shall become effective (if at all) as described in the Appeal Regulations. The Committee was not persuaded that the ground for imposing an immediate order was made out given the facts of this case and that public protection is not involved.

Mr Michael Cann
Chair
9 October 2023