

HEARING

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

In the matter of: Miss Shehla Batool

Heard on: Tuesday, 12 September 2023

Location: Remote link via Microsoft Teams

Committee: Mrs Carolyn Tetlow (Chair),
Mr Andrew Skelton (Lay)
Mr Trevor Faulkner (Accountant)

Legal Adviser: Mr Alastair McFarlane

**Persons present
and capacity:** Mr Alex Mills (Case presenter on behalf of ACCA)
Ms Nicole Boateng (Hearings Officer)

Costs: £5,734

Summary: Allegations 1, 2, 3a found proved

1. ACCA was represented by Mr Mills. Miss Batool did not attend and was not represented. The Committee had before it a Bundle of papers, numbered pages 1 – 102, a Service Bundle numbered pages 1 – 18 and a video recording of approximately 1 hour 9 minutes.

SERVICE/PROCEEDING IN ABSENCE

2. Having considered the Service Bundle, the Committee was satisfied that Notice of the Hearing was served on Miss Batool in accordance with the Complaints and Disciplinary Regulations 2014 ("CDR").
3. Mr Mills, for ACCA, made an application for the hearing to continue in the absence of Miss Batool.
4. The Committee accepted the advice of the Legal Adviser.
5. The Committee noted that following the service of the Notice of Hearing on 15 August 2023, the Hearings Officer had telephoned Miss Batool on 5 September 2023 when Miss Batool confirmed that she would not be attending the hearing. The Committee noted that the Hearings Officer sent Miss Batool the attendance note of this telephone conversation and that Miss Batool sent an email in response in which she stated she did not want to attend the hearing because she left ACCA two years ago "due to some reasons". Further the Hearings Officer sent her an email dated 11 September 2023 which included the hearing link in case Miss Batool changed her mind about participation. It also noted that Miss Batool has not engaged with the case at all.
6. The Committee was satisfied from Miss Batool's email of 5 September 2023 and her telephone conversation with the Hearings Officer and her non-engagement with ACCA that she has voluntarily waived her right to attend this hearing. It was satisfied that an adjournment would be very unlikely to secure her participation. It was mindful of the duty on all professionals to co-operate with their Regulator and the public interest in the expeditious discharge of the Committee's regulatory function. In all the circumstances it was just to proceed with the hearing in her absence.
7. Having received an application from ACCA to make three minor punctuation amendments to the Allegations, the Committee granted these minor amendments under Regulation 10(5). It was satisfied that these very minor amendments did not cause any prejudice to the absent Miss Batool. They consisted of the removal of an apostrophe, the addition of a full stop, and the replacement of a semi-colon with a full stop. These changes had no effect on the content of the Allegations.

ALLEGATIONS (as amended)

Allegation 1

Miss Shehla Batool (Miss Batool), an Association of Chartered Certified Accountants ('ACCA') student:

- 1) On 8 December 2020, during a remotely invigilated Management Information examination (the Exam):
 - a. Failed to comply with instructions issued by ACCA personnel (as per the Student Information Sheet) before and/or during the exam, in that she failed to ensure she was in a room with no-one else around her, contrary to Examination Regulation 2.
 - b. Talked to another person during the exam other than the exam supervisor/invigilator or proctor, contrary to Examination Regulation 16.
- 2) Contrary to Regulation 3(1) of the Complaints & Disciplinary Regulations 2014 (as amended), Miss Batool 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. 24 May 2021;
 - b. 15 June 2021;
 - c. 30 June 2021;
 - d. 23 September 2021.
- 3) By reason of her conduct, Miss Batool is:
 - a. Guilty of misconduct pursuant to byelaw 8(a)(i), in respect of any or all of the above matters or, in the alternative,
 - b. Liable to disciplinary action pursuant to byelaw 8(a)(iii).

BACKGROUND

8. Miss Batool registered as an ACCA student on 31 January 2020
9. On 8 December 2020, Miss Batool was due to take an on-demand MA1 Management Information examination (the 'Exam') remotely. On 8 December 2020, the online proctor (the remote invigilator) filed an Incident Report in respect of conduct observed during the Exam. The proctor noted that an individual was seen in the testing area.
10. ACCA obtained documents and video footage relating to the Exam. In particular, the video footage obtained allegedly revealed the presence of a third party in the same room as Miss Batool while she was sitting the Exam; whispering can be heard throughout the session and a door can be seen opening behind Miss Batool.
11. ACCA sent Miss Batool emails seeking her response to the allegations on 24 May 2021, 15 June 2021 and 30 June 2021. No response was received. On 23 September 2021 ACCA sent to Miss Batool a translation of the discussion between her and a third party seen and heard during the Exam. Again, Miss Batool was asked to provide her comments and whether she accepted the translation was correct. She was also asked to provide a statement from the person she spoke to during the Exam. No response was received.
12. On 20 March 2023 ACCA wrote to Miss Batool requesting her to complete its Case Management Form. No response was received. On the same date ACCA contacted Miss Batool via telephone and during this call Miss Batool requested her ACCA registration be cancelled. She was informed by ACCA on 14 July 2023 that her resignation would not be accepted while disciplinary proceedings were pending against her.

ACCA SUBMISSIONS

Allegation 1.a – Failed to comply with instructions issued by ACCA personnel (as per the Student Information Sheet) before and/or during the exam, in that she failed to ensure she was in a room with no-one else around her, contrary to Examination Regulation 2.

13. ACCA relied upon the video recording of the Exam which shows on occasions

an individual in the testing area besides Miss Batool and records whispered conversation between Miss Batool and a third party. The door behind Miss Batool then opens. The Exam was terminated because of this and following the "shut down" another individual is heard talking to Miss Batool. ACCA relied on the "Information Sheet for On-Demand CBE students sitting exams at home" which provides 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".

14. ACCA submitted that by failing to comply with this instruction from ACCA, Miss Batool was in breach of Examination Regulation 2, which requires 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".

Allegation 1b – Talked to another person during the exam other than the exam supervisor/invigilator or proctor, contrary to Examination Regulation 16

15. ACCA further submitted that contrary to Examination Regulation 16 which states "Candidates must not talk to, or attempt to communicate with, people other than the exam supervisor/s, invigilator/s or proctor/s for the duration of the exam." Miss Batool did in fact communicate with another person during the exam other than the exam supervisor/invigilator or proctor. Permitting a third party to be present in the exam testing area and communicating with the third party seriously undermines the security and integrity of remote exams and should not go unchecked.

Allegation 2 – Failure to co-operate fully with ACCA's Investigation

16. ACCA sent e-mail correspondence to Miss Batool's registered e-mail address as set out under Regulation 15 of The Membership Regulations 2014.
17. Miss Batool failed to respond to ACCA's investigation in this matter. ACCA submitted that Miss Batool's failure to co-operate fully with ACCA's investigation into her conduct demonstrated a lack of professionalism and a disregard for ACCA's regulatory process. Miss Batool's failure to respond to questions asked by ACCA about her conduct did not prevent ACCA from

investigating this matter, as evidence was obtained through third party sources. Nevertheless, ACCA submitted that the failure was serious for organisations such as ACCA that self-regulate their members, as ACCA needs a member's co-operation in order to investigate complaints fully in order to discharge its regulatory function. Every ACCA student has an obligation to co-operate fully with their professional body, and to engage with it when any complaints are raised against the individual. Such cooperation is fundamental to a Regulator being able to discharge its obligations of ensuring protection of the public and upholding the reputation of and confidence in the profession.

MISS BATOOL SUBMISSIONS

18. Miss Batool had made no submissions.

DECISION ON ALLEGATIONS AND REASONS

19. The Committee accepted the advice of the Legal Adviser. The Committee reminded itself that the burden of proving the allegations was on ACCA alone and that a matter would be found proved if it was more likely than not that it had occurred.
20. The Committee heard that there had been no previous findings against Miss Batool and accepted that it was relevant to put her good character into the balance in her favour.

DECISION ON FACTS

21. The Committee carefully considered all the documentary evidence it had received, including the video evidence of the Exam and a transcript of the conversations recorded between Miss Batool and a third party after the start of the Exam, which had been professionally translated into English. It noted the submissions of Mr Mills on behalf of ACCA. It reminded itself to exercise caution in relation to working from documents.
22. The Committee carefully viewed the video evidence and was satisfied that during the Exam there was someone else in the testing area with Miss Batool and that she communicated with another person during the Exam.

Allegation 1a and b

23. The Committee was satisfied that Miss Batool sat the Exam on 8 December 2020. It accepted the video evidence recording the Exam as clear, accurate and reliable. There was a third-party present before the Exam started. There was a man visible on the recording in the room before the Exam started, and he spoke openly to the invigilator. Secondly the Committee accepts that it was recognised by the student that the third party should not be there as she is recorded as saying “get out for now”. Further, on balance, given that the person was not seen to leave, the movements of Miss Batool and the whispering recorded at, for example, minutes 38 to 40 of the recording (which was after the Exam had started), the Committee accepted that this evidence established that the third party remained in the room after the Exam started and was there when it was terminated. The Committee was therefore satisfied that Miss Batool knew that she should not have a third party in the room and that this was in breach of Exam Regulation 2. Accordingly, the Committee was satisfied that Allegation 1a was proved.
24. Further the Committee was satisfied given its findings of facts set out above that Miss Batool talked to another person during the Exam. There was a transcript of a discussion with another person showing 3 examples of communication with someone else in the room while the Exam was taking place. The Committee was satisfied that this was in breach of Exam Regulation 16. Accordingly, the Committee was satisfied that Allegation 1b was proved.

Allegation 2

25. In relation to Allegation 2, the Committee was satisfied that under paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, there was an obligation on Miss Batool to co-operate fully with ACCA in the investigation of any complaint. It was satisfied that Miss Batool made no response to ACCA’s correspondence requesting her co-operation on 24 May 2021, 15 June 2021, 30 June 2021 and 23 September 2021. It was therefore satisfied that these non-responses amounted to failures as Miss Batool had a duty to

respond. Therefore, she breached the obligation under the Regulations and the Committee concluded that Allegation 2 was proved.

MISCONDUCT

26. The Committee next considered under Allegation 3 whether the proved conduct at 1a and/or 1b and/or 2 a, b, c and d amounted to misconduct.
27. The Committee first considered whether the breaches of the Exam Regulations were serious enough to amount to misconduct. The Committee was satisfied that they were. The Exam Regulations are in place to maintain the integrity of the examination system and the reputation of ACCA examinations. Although it is not ACCA's case that this was a case of cheating or dishonesty, the Committee was satisfied that Miss Batool's breaches of the Exam Regulations undermined both the integrity and the reputation of the ACCA examinations system.
28. 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 Miss Batool's actions brought discredit on her, the Association and the accountancy profession. It was satisfied that despite the absence of any allegation of cheating, the breaching of the Exam Regulations in this case did reach the threshold of seriousness for misconduct. The Committee noted that ACCA did not allege the conduct was motivated to gain an unfair advantage or to cheat or that her conduct was dishonest. Her motivation is not known to the Committee. Nonetheless, it was satisfied that Miss Batool knew before the start of the Exam that she was not permitted to have a third party in the room with her. It also found as a fact that during the Exam Miss Batool was trying to hide the presence of the third party. Her conduct therefore had the potential to undermine the integrity of ACCA's examination system and public confidence in those examinations and thus the profession.
29. The Committee was satisfied that the duty on professionals to cooperate with their regulator is an important one, both to enable the regulator to properly and fairly discharge its regulatory function and to uphold public confidence in the regulatory system. The Committee was satisfied that Miss Batool's failure to co-operate reached the threshold, in this case, to amount to misconduct.

30. In the light of its judgment on misconduct, no finding was needed upon liability to disciplinary action.

SANCTIONS AND REASONS

31. The Committee noted its powers on sanction were those set out in Regulation 13(4). It had regard to ACCA's Guidance for Disciplinary Sanctions and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate. It accepted the advice of the Legal Adviser.

32. The Committee considered that the conduct in this case was serious. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. The Committee reminded itself that this was not a dishonesty case, but one where important exam regulations were breached along with the very important obligation on all professionals to co-operate with their regulator.

33. The Committee identified the following mitigating factors:

- Miss Batool was of good character with no previous disciplinary record
- The Exam conduct was an isolated incident

34. The Committee identified the following aggravating factors:

- No evidence of insight or remorse
- Potential damage to the examination system
- Potential to undermine the reputation of the profession
- There was no engagement with ACCA over a prolonged period

35. Given the Committee's view of the seriousness of Miss Batool's conduct, it was satisfied that 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. In considering a Severe Reprimand, the Committee noted that a majority of the factors listed in the guidance were not present and, in particular, there was no evidence of insight or remorse. It was the Committee's decision that Miss Batool was

aware that she should not permit a third party to be present in the room. The Committee considered the factors listed at C5 of the Guidance for removal of Miss Batool and was satisfied that her conduct was fundamentally incompatible with remaining on the register. The failure to comply with ACCA's legitimate requests for information from her professional regulator is also very serious in the Committee's judgment. The Committee was satisfied that only removal from the register was sufficient to mark the seriousness to the profession and the public.

COSTS AND REASONS

36. ACCA claimed costs of £5,734 and provided a Schedule of costs. It noted Miss Batool was a student but has not provided a statement of means. The Committee decided that it was appropriate to award costs in this case, and considered the costs claimed to be reasonably incurred. It had no basis to reduce the costs as it is unaware of Miss Batool's means. It concluded that the proportionate and appropriate amount of costs was £5,734. Accordingly, it ordered that Miss Batool pay ACCA costs in the amount of £5,734.

EFFECTIVE DATE OF ORDER

37. 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.

Ms Carolyn Tetlow
Chair
12 September 2023