

## HEARING

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

#### REASONS FOR DECISION

**In the matter of:** Mr Muhammad Rizwan

**Heard on:** Wednesday, 13 September 2023

**Location:** Remote link via ACCA Offices, The Adelphi, 1-  
11 John Adam Street, London WC2N 6AU

**Committee:** Mr Andrew Popat CBE (Chair)  
Mr Andy Skelton (Lay)  
Mr David Horne (Accountant)

**Legal Adviser:** Mr Alastair McFarlane

**Persons present  
and capacity:** Mr Alex Mills (Case presenter)  
Ms Anna Packowska (Hearings Officer)

**Summary:** Removal from Student Register

**Costs:** £5,983.50

#### ACCA



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The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

1. ACCA was represented by Mr Mills. Mr Rizwan did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages 1 – 152, a service bundle numbered pages 1 – 16 and a video recording of the examination.

### **SERVICE/PROCEEDING IN ABSENCE**

2. Having considered the service bundle, the Committee was satisfied that notice of the hearing was served on Mr Rizwan 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 Mr Rizwan.
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 sent follow-up emails to Mr Rizwan on 31 August 2023 and again on 6 September 2023 seeking confirmation whether or not Mr Rizwan would be attending the hearing. The Hearings Officer also telephoned Mr Rizwan on 6 September 2023 and managed to speak to him. The Committee noted the Hearings Officer’s the attendance note of this telephone conversation in which it is recorded that Mr Rizwan stated that he will not attend the hearing. He indicated he would confirm the position by email. Mr Rizwan has not responded to the Notice of Hearing or the Hearings Officer’s follow-up emails or confirmed his position by email as he had indicated he would do so in the telephone conversation. Further, the Hearings Officer sent him an email dated 11 September 2023 which included the hearing link in case Mr Rizwan changed his mind about participation. It also noted that Mr Rizwan has not engaged with the case since September 2021.
6. The Committee was satisfied from Mr Rizwan’s telephone conversation with the Hearings Officer on 6 September 2023 and his non-engagement with ACCA that he has voluntarily waived his right to attend this hearing. It was satisfied that an adjournment would be very unlikely to secure his 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 his absence.

## **ALLEGATIONS**

*Mr. Muhammad Rizwan ('Mr. Rizwan'), a student of the Association of Chartered Certified Accountants ('ACCA') on 25 December 2020, during an FMA Management Accounting remotely invigilated exam:*

*1) Engaged in improper conduct designed to assist him in his exam attempt in that he caused or permitted a third party*

*(i) To be present and/or*

*(ii) To communicate with him during all or part of the exam.*

*2) In respect of Mr. Rizwan's conduct referred to in paragraph 1 he:*

*(a) Failed to comply with instructions issued by ACCA personnel, as per the "Information Sheet for On-Demand CBE Students sitting exams at home" in that he caused or permitted a third party to be present in the Exam room and thereby failed to ensure he was in a room with no-one else around him, contrary to Examination Regulation 2; and/or*

*(b) Was in breach of examination regulation 10*

*3) Further, Mr. Rizwan's conduct as referred to in paragraphs 1 and 2 above:*

*(a) Was dishonest, in that Mr. Rizwan sought to obtain an unfair advantage in the examination by obtaining assistance from a third party; or in the alternative,*

*(b) Demonstrates a lack of integrity.*

4) *By reason of his conduct, Mr. Rizwan is:*

*(a) guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the matters set out at allegations 1 - 3 above; or, in the alternative,*

*(b) in respect of allegation 2 only, liable to disciplinary action pursuant to bye-law 8(a)(iii).*

## **BACKGROUND**

7. Mr Rizwan registered as an ACCA student on 21 August 2018.
8. On 25 December 2020, Mr Rizwan sat his FMA Management Accounting examination (the 'Exam') remotely.
9. ACCA contended that suspicious behaviour was noted by the proctor (remote invigilator) in the Incident Report, confirming that there was audible whispering during the exam that did not seem to come from Mr Rizwan. The whispering persisted and was intermittently audible throughout the remainder of the examination session.
10. ACCA obtained documents and video footage relating to the Exam.
11. Mr Rizwan has provided his representations in response to ACCA's enquiries. In his 29 May 2021 response, Mr Rizwan denies that the whispers that may be heard on the sound recording of the video footage, in particular, at 1:07:50-1:08:16, 1:08:36-1:08:47, 01:50:00-1:50:30 and to 1:52:12 were emanating from the room where he was sitting the exam and that its' source must have been outside the room. In his 14 June 2021 response, he also denies that another person was in the same room as him where he sat the exam session, even though ACCA contend the video footage, at 1:30:20, appears to show the shadows of another person on the door.

## **ACCA's SUBMISSIONS**

### **Allegation 1**

*Engaged in improper conduct designed to assist him in his exam attempt in that he caused or permitted a third party:*

*(i) To be present and/or*

*(ii) To communicate with him during all or part of the exam.*

12. ACCA relied upon the video recording of the exam on which at one point a third party's voice can be heard whispering "37", which is part of the answer to the question Mr Rizwan was answering on the screen at the time. After the whispering Mr Rizwan can be seen typing this number as his answer. The Committee was provided with a screenshot of this examination answer as typed by Mr Rizwan.

### **Allegation 2**

*In respect of Mr. Rizwan's conduct referred to in paragraph 1 he:*

*(a) Failed to comply with instructions issued by ACCA personnel, as per the "Information Sheet for On-Demand CBE Students sitting exams at home" in that he caused or permitted a third party to be present in the Exam room and thereby failed to ensure he was in a room with no-one else around him, contrary to Examination Regulation 2; and/or*

13. ACCA rely on a camera pan of the room that was undertaken at 1:30: 04 to 1: 30:46. It contends that the shadow of a third-party can be seen on the door that Mr Rizwan opens to the ensuite bathroom, showing the Proctor inside. 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". ACCA relies on Mr Rizwan typing "agree" to these rules when he was asked to do so via the chat box before the exam.

14. ACCA submitted that by failing to comply with this instruction from ACCA, Mr Rizwan 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 2(b) was in breach of examination regulation 10.**

15. ACCA submitted that a third party’s voice can be heard whispering. During the exam the voice is heard saying “37”. This it contended amounted to a breach of Exam Regulation 10, as it was part of an answer to a question that Mr Rizwan was dealing with at the time.

**Allegation 3**

*Mr Rizwan’s conduct was a) dishonest, in that Mr. Rizwan sought to obtain an unfair advantage in the examination by obtaining assistance from a third party; or in the alternative, demonstrated a lack of integrity.*

16. ACCA submitted by having a third party in the room whispering to him at least one answer Mr Rizwan was seeking to gain an unfair advantage and, in effect, was cheating. ACCA contended this was dishonest or in the alternative lacking in integrity.

**MR RIZWAN’S SUBMISSIONS**

17. In an email to ACCA dated 9 February 2021 Mr Rizwan stated:

*“Good Evening Sir!*

*So As ACCA Holded Because of Some Reasons Which You Told me In Your Email Actually Sir I Wanna Say Something. As You Mentioned that While Attempting the Paper You Heard Someone Whispering to me On 25 December Actually That’s Not the Case So I’ll Elaborate my Situation Sir I Belong to a Rural Area And in my Area There is no institute of ACCA So I Have to Travel to Islamabad For my Studies So I Live in a Hostel and Rooms are Very Close*

*to Each other So While Attempting the Paper the Boys From Room Near me Was Talking to Each other and there is a Window in my Room From which Noise Were Coming and Window was Closed So The Sound Was Coming Very Slow There Was No one in my Room Talking To me I Was Alone Attempting my was the noise of Boys From Other Room and As invigilator Heard Someone Whispering Which Was Coming From Other Room He Asked me to Show my Room So He Can assure that No one is Around me So I Showed him my Whole Room And He Was Satisfied and He Said I Can Continue my Paper and As I Was Sitting in front of the Door Which the Only Place to Entry and Exit and Talking about the Window so Window is Fixed Because it's Hostel So it is Fiexed So Privacy Can be Maintained of Each Room. So there No Chance Soeomeone is Whispering to me because I Showed the Room to invigilator Twice So if there was anything wrong, so he Could've caught me Easily. I Know Acea Rules and Regulations Why Would I Risk my Career by Crossing the limits I Belong to a Middle Class Family So I Can't Risk my Future by Attempting any Wrong Thing it was Surely a Misunderstanding From Your Side So Kindly Show Some Mercy Otherwise My Future is Gonna End up here and lam the only Son of My Parents to Support them and I Won't do Neither I Did Something Wrong it was Just Misunderstanding So Please Release myAccount so I Can Continue my Studies as my Parents are Working Hard to Pay my Feeses So Please Sir I Don't Wanna Disappoint them by Sharing this News and Something which I never did. Sir it's my Whole Career So Please Take a Close look it was a Misunderstanding. Waiting For Your Humble Response.  
Thank You So Much!"*

In an email to ACCA dated 29 May 2021 Mr Rizwan stated:

*"Yes I saw video which u send to me .In this video a voice recorded behind me.that is outside because I live in a hostel. This voice is bore my paper starting.in this time invigilator told me there is some technical problem that he said he refer to higher athorty to solve .that's why I am waiting for his replay to start my paper.once again there no one in the room u can check it."*

Further in an email dated 14 June 2021 Mr Rizwan stated:

*“There is No one in the room during exam”*

And in a second email of 14 June 2021, he added:

*“All yours ques ions Answer is only one there is no one in the room during exam.”*

Finally, in an email dated 20 September 2021 Mr Rizwan stated:

*“Hello Dear, I already told u there no one in the room during the exam.i don't no what are u saying about third party? There is no one in room during the exam. kindly solve my case u already waste my 1-year period time. Slove it soon. i hope u understand my answer and do not waste my more time. Thanks”.*

## **DECISION ON ALLEGATIONS AND REASONS**

18. 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.
19. The Committee heard that there had been no previous findings against Mr Rizwan and accepted that it was relevant to put his good character into the balance in his favour.
20. The Committee carefully considered all the documentary evidence it had received, including the video evidence of the exam. It noted the submissions of Mr Mills on behalf of ACCA. It reminded itself to exercise caution in relation to working from documents.

### **Allegation 1**

*Engaged in improper conduct designed to assist him in his exam attempt in that he caused or permitted a third party:*

*(i) To be present and/or*



*(ii) To communicate with him during all or part of the exam.*

21. The Committee carefully viewed the video evidence and was satisfied that during the exam there was someone else in the testing area with Mr Rizwan and that he communicated with another person during the exam.
  
22. The Committee was satisfied that Mr Rizwan sat the exam on 25 December 2020. It accepted the video evidence recording the exam as clear, accurate and reliable. It accepted that there was a lot of background noise recorded in the footage and that this was most likely voices outside the room. Nonetheless the Committee was satisfied that there was repeated whispering which did not fall into this category of voices outside the room and was, in the Committee's judgment, whispering by a third party inside the room. The Committee was satisfied that on a number of times on the recording that whispering is clearly heard. It was able to differentiate between background noise from adjoining rooms, that Mr Rizwan contended accounted for all of the noise, and whispering that was clearly near the microphone, and in the Committee's judgment, from within the room. There were occasions when Mr Rizwan's lips were not moving and yet whispering was clearly heard. In addition, on the camera room pans, there was one occasion that the cupboard door was locked and one occasion when it was open. That could not have happened in the Committee's judgment unless someone else was in the room. For all these reasons the Committee was satisfied on the balance of probabilities that there was a third party in the room with Mr Rizwan. It was satisfied that the third-party communicated with Mr Rizwan and, on one occasion could be heard providing him with part of answer to a question that was on the screen before him at that time. The Committee rejected as implausible Mr Rizwan's assertion that nobody was in the room with him. This was contrary to the plain and clear evidence of the video. The Committee was therefore satisfied from Mr Rizwan's confirmed acceptance of the Exam Rules that knew that he should not have a third party in the room and that therefore by permitting a third party in the room and communicating with him that he had engaged in improper conduct. Accordingly, the Committee was satisfied that Allegation 1 was proved.

## **Allegation 2**

*In respect of Mr. Rizwan's conduct referred to in paragraph 1 he:*

*(a) Failed to comply with instructions issued by ACCA personnel, as per the "Information Sheet for On-Demand CBE Students sitting exams at home" in that he caused or permitted a third party to be present in the Exam room and thereby failed to ensure he was in a room with no-one else around him, contrary to Examination Regulation 2;*

23. Further the Committee was satisfied given its findings of facts set out above that Mr Rizwan had received the Information Sheet and that he agreed to the rules on sitting exams remotely. The Committee was satisfied that Mr Rizwan had a duty to comply with the rules set out on the Information Sheet. Given its finding that someone else was present in the room, the Committee was satisfied that Mr Rizwan had failed to comply with ACCA's instructions as per the Information Sheet and thereby failed to comply with Examination Regulation 2. Accordingly, the Committee was satisfied that Allegation 2 was proved.

### **Allegation 2(b) was in breach of examination regulation 10.**

24. This regulation requires examinees not to engage in improper conduct "designed to assist in your exam". Given its findings in Allegation 1, the Committee was satisfied that Mr Rizwan breached these regulations and therefore Allegation 2 b) is proved.

## **Allegation 3**

*Mr Rizwan's conduct was a) dishonest, in that Mr. Rizwan sought to obtain an unfair advantage in the examination by obtaining assistance from a third party; or in the alternative, demonstrated a lack of integrity.*

25. The Committee first asked itself off whether Mr Rizwan's conduct was dishonest in that he had sought to obtain an unfair advantage in the exam by

obtaining assistance from a third-party. The Committee asked itself what Mr Rizwan's belief was as to the facts - what was his state of mind as to the facts at the time. The Committee was satisfied, given its findings of fact, and, in particular, that Mr Rizwan wrote down an answer to the question on the screen before him that had been whispered to him by a third-party, was that that he intended to use assistance from a third-party to gain an unfair advantage - in other words, to cheat. The Committee was satisfied that he was aware of the prohibition of third parties being in the room. It found that Mr Rizwan's permitting a third party to be in the room, and the communication between Mr Rizwan and the third party, was a deliberate, planned act with the intention of gaining an unfair advantage in the exam. It was satisfied that he had intended to use the assistance of the third party in the room to cheat in the exam and gain an advantage over other examinees. It had no hesitation in determining that Mr Rizwan's belief at the time was dishonest according to the standards of ordinary decent people. Accordingly, it was satisfied that Allegation 3 (a) was proved and did not consider the alternative of Allegation 3 (b).

#### **Allegation 4**

*By reason of his conduct, Mr. Rizwan is:*

*(a) guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the matters set out at allegations 1 - 3 above; or, in the alternative,*

*(b) in respect of allegation 2 only, liable to disciplinary action pursuant to bye-law 8(a)(iii).*

26. The Committee next asked itself whether, having been dishonest, Mr Rizwan was guilty of misconduct.
27. The Committee had regard to the definition of misconduct in Bye-law 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Mr Rizwan's actions brought discredit on him, the Association, and the accountancy profession. It was satisfied that cheating in a professional exam was deplorable conduct and reached the threshold of seriousness for

misconduct. Being honest and trustworthy is a fundamental tenet of the accountancy profession. His conduct therefore had the potential to undermine the integrity of ACCA's examination system and public confidence in those taking the examinations and thus the profession.

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

### **SANCTIONS AND REASONS**

29. 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.

30. The Committee considered that the conduct 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. Being honest is a fundamental requirement of any accountant.

31. The Committee identified only one mitigating factor:

- Mr Rizwan was of good character with no previous disciplinary record.

32. The Committee identified the following aggravating factors:

- No evidence of insight or remorse;
- This was pre-planned deliberate misconduct involving dishonesty;
- Potential damage to the examination system;
- Potential to undermine the reputation of the profession.

33. Given the Committee's view of the seriousness of Mr Rizwan'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. The Committee had regard to Section E3 of the Guidance on Dishonesty and the seriousness of such a finding on a professional. It considered the factors listed at C5 of the Guidance for removal of Mr Rizwan and was satisfied that his conduct was fundamentally incompatible with remaining on the register. 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**

34. ACCA claimed costs of £9,073.50 and provided a schedule of costs. It noted Mr Rizwan was a student but has not provided a statement of means. The Committee noted that the case has only lasted less than 1 full day and not the 2 days scheduled. The Committee decided that it was appropriate to award costs in this case, and considered the costs claimed for most of today to be reasonably incurred. It had no basis to reduce the costs further as it is unaware of Mr Rizwan's means. It concluded that the proportionate and appropriate amount of costs was £5,983.50. Accordingly, it ordered that Mr Rizwan pay ACCA's costs in the amount of £5,983.50.

#### **EFFECTIVE DATE OF ORDER**

35. 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.

**Mr Andrew Popat CBE**  
**Chair**  
**13 September 2023**