

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Muhammad Talha Butt

Heard on: Tuesday, 30 April 2024

Location: Virtual Hearing via Microsoft Teams

Committee: Mrs Valerie Paterson (Chair)
Ms Joanne Royden-Turner (Accountant)
Mr Andrew Skelton (Lay)

Legal Adviser: Mr Ashraf Khan

**Persons present
and capacity:** Ms Michelle Terry (ACCA Case Presenter)
Miss Nicole Boateng (Hearings Officer)

Summary Removed from the student register

Costs: £5,851.58

PRELIMINARY APPLICATIONS

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1. The Committee had considered a Main Bundle headed “DC Bundle” numbered 1-102, a Service Bundle numbered 1-20 and a 2-page Memorandum and Agenda. In addition, the Committee was provided with a copy of Mr Butt’s examination video headed “DC Examination Video” which was 2 hours, 40 minutes, and 52 seconds in length.
2. The Committee was informed that Mr Butt had been served with a notice of today’s hearing and all the above papers via email on 2 April 2024. No response had been received from Mr Butt.
3. The Committee was satisfied that emails had been sent to Mr Butt’s registered email address in accordance with Regulation 22 of the Complaints and Disciplinary Regulations 2014 as amended (“CDR”). The Committee noted that the email had been delivered successfully. CDR 22(8) stipulates that, when a notice has been sent by email, it is deemed to have been served on the day it was sent. Accordingly, the Committee was satisfied that Mr Butt has been given 28 days’ notice with the necessary information required in accordance with CDR10.
4. The Committee decided that Mr Butt had been properly served with Notice of Proceedings.

PROCEEDING IN ABSENCE

5. The Committee noted that on 24 April 2024, ACCA called Mr Butt on the mobile number registered with ACCA. The call was not answered and there was no facility to leave a message. On the same day, ACCA emailed Mr Butt asking him to confirm if he would be attending the hearing today.
6. On 26 April 2024, a further attempt was made to call Mr Butt on his registered mobile number. Again, the call was not answered and there was no facility to leave a message. An email was sent to Mr Butt on the same day, asking for clarification as to whether Mr Butt would be attending the hearing. A separate email with the hearing details was also sent.

7. On each of the above occasions, within the emails, Mr Butt was reminded of the Committee's power to proceed in his absence.
8. No response was received to any of ACCA's communications.
9. The Committee considered that ACCA had done everything possible to enable Mr Butt to attend the hearing. The Committee was satisfied that the emails had been sent to the address on the ACCA's register and that there was a record of the emails having been delivered successfully.
10. The Committee also took into account Mr Butt's failure to respond to correspondence as particularised in allegation 2, together with further correspondence from ACCA to Mr Butt in April, to which there had been no response.
11. The Committee concluded, on the balance of probabilities, that Mr Butt was aware of today's hearing but had voluntarily absented himself.
12. The Committee was also satisfied that, taking into account the seriousness of the allegations, it was in the public interest to proceed. The Committee did not consider that any benefit would be derived in adjourning the hearing and no such application had been made.

APPLICATION TO HEAR PART OF THE HEARING IN PRIVATE

13. [Private].

BACKGROUND

14. On 26 September 2018, ACCA registered Mr Butt as a student. As such, he is bound by ACCA's Bye-laws and Regulations, including the Examination Regulations.
15. On 23 December 2020, Mr Butt sat his Corporate and Business Law examination (the exam) remotely. As part of the exams booking process, and

immediately before the commencement of the exam, ACCA submit Mr Butt would have been required to have agreed to ACCA's terms and conditions on sitting exams remotely. These would have included the Information Sheet for On-Demand CBE Students sitting exams at home (the Student Information Sheet) which contains the Examination Regulations and Guidelines, and the CBE announcements.

16. The proctor (remote invigilator) filed an Incident Report in respect of conduct observed during the exam, noting the *“test taker was observed looking off-screen to their left however they don't seem to be using materials for the exam”*.
17. An investigation was commenced. Despite numerous requests, Mr Butt has not provided any response to the correspondence sent to him during the course of the investigation. All emails were sent to Mr Butt at an email address he provided to ACCA. The email address has not changed throughout the course of the investigation. None of the emails have been returned or bounced back into the case management system. ACCA spoke to Mr Butt several times on the telephone asking him to respond to the questions raised in ACCA's correspondence in relation to the complaint. Whilst Mr Butt did provide some limited responses in certain telephone calls made to him, he has not provided a substantive response verbally and has not responded at all to emails sent in relation to the complaint.
18. On 21 April 2021, ACCA sent a letter to Mr Butt's registered email address informing him of the complaint and seeking his response by 12 May 2021. No response was provided.
19. On 13 May 2021, ACCA sent another letter to Mr Butt's registered email address reminding him of his obligation to co-operate with the investigation and seeking his response by 27 May 2021. No response was provided.
20. On 28 May 2021, ACCA sent a further letter to Mr Butt's registered email address reminding him again of his obligation to co-operate with the investigation and again seeking his response by 4 June 2021. No response was provided.

21. On 11 November 2021, ACCA sent Mr Butt a letter outlining the draft allegations which may be raised against him. A copy of 21 April letter was also attached, and Mr Butt was asked to respond to the questions contained in the letter. No response was received.
22. After speaking with Mr Butt on the phone on 15 November 2021, ACCA sent Mr Butt on the same day an email asking him to provide his responses to the complaint. In the 15 November telephone call, Mr Butt said he would provide a response to the complaint. No response was received.
23. On 19 November 2021, ACCA sent another email to Mr Butt as he had not provided a response to the complaint, asking him to respond. No response was received.
24. After speaking with Mr Butt on the phone on 23 November 2021, ACCA sent Mr Butt on the same day an email asking him to provide his responses to the complaint. ACCA gave Mr Butt one week to respond, by 30 November 2021. No response was received.
25. On 3 December 2021, ACCA sent another email to Mr Butt providing him with an email address as to where he can send his responses. No response was received.
26. As part of the investigation, documents and video footage relating to Mr Butt's exam on 23 December 2020 had been obtained. A review of the video footage from the exam revealed Mr Butt was distracted by a third party before the exam launched. Mr Butt can be seen looking to his left-hand side, speaking to a third party and the third party can be heard replying to him. Mr Butt can also be seen before his exam launched, smoking whilst speaking to a third party and drinking a beverage, other than water, which he had on his desk or on or about his person.
27. ACCA submitted that Mr Butt had breached the Examination Guidelines as prior to his exam he was distracted by another person, did not place smoking

equipment out of sight and remove any drinks, other than water, from his desk or on or about his person, contrary to Examination Regulation 1 which requires students to comply with the Examination Guidelines.

28. ACCA identified key incidents from reviewing the video footage and screen recording of Mr Butt's exam. These are set out below:

- At 1:55-2:03, Mr Butt can be seen speaking and turning his head to his left-hand side. Another person can be heard replying to him, and Mr Butt replies to them.
- At 2:24, Mr Butt can be seen smoking.
- At 4:05, Mr Butt can be seen drinking a beverage, other than water, from a labelled bottle.
- At 10:06-10:13, Mr Butt turns his camera to his left, showing the proctor the bathroom door.
- At 12:45-15:10, a camera pan is performed.
- At 36:30-36:50, a phone can be heard ringing which leads to Mr Butt speaking to another person and looking off-screen to his left-hand side.
- Between 39:00 and 40:00, Mr Butt confirms the exam he is sitting, that his personal details on screen are correct and that he has read, understood, and agrees to abide by the exam regulations, and clicks continue to proceed to his exam.
- At 42:28-43:12, a camera pan is performed.
- Between 44:45 and 45:45, the exam is launched.
- Between 2:33:45 and 2:34:45, the exam is submitted.

ALLEGATIONS

Mr Muhammad Talha Butt (Mr Butt), a student member of the Association of Chartered Certified Accountants ('ACCA'):

1. Contrary to Examination Regulation 1, failed to comply with the Examination Guidelines before a Corporate and Business Law (LW) ('The

Exam') on 23 December 2020, in that he failed to ensure any or all of the following:

- (a) He was not disturbed and/or without distractions
- (b) Place smoking equipment out of sight
- (c) Remove drinks, other than water, from his desk and/or on or about his person

2. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014 (as applicable in 2021), failed to co-operate fully with the investigation of a complaint, in that he did not respond to any or all of ACCA's correspondence dated:

- (a) 21 April 2021
- (b) 13 May 2021
- (c) 28 May 2021

3. By reason of his conduct, Mr Butt 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 to 2 above; or in the alternative,
- (b) Liable to disciplinary action pursuant to bye-law 8(a)(iii)

DECISION ON FACTS/ALLEGATIONS AND REASONS

ACCA Submissions

29. ACCA submitted that the allegations referred to above are capable of proof by reference to the documents in the Bundle attached to its report and the video footage of the exam which was played during the hearing.

30. ACCA submitted that if any, or all, of the facts set out in the allegations are found proved, Mr Butt has acted in a manner which brings discredit to him and to the accountancy profession, and his conduct amounts to misconduct pursuant to bye-law 8(a)(i).
31. ACCA submitted that if it is found proved that Complaints & Disciplinary Regulation 3(1) and/or Examination Regulation 1 has been breached, bye-law 8(a)(iii) is automatically engaged in respect of both allegations.
32. ACCA submitted that failure to co-operate fully with one's professional body is a serious matter, demonstrating a lack of professional responsibility and a disregard for ACCA's regulatory process. A failure to adequately respond to questions asked by ACCA during an investigation into one's conduct prevents ACCA from fully investigating and, if necessary, taking action upon, what might be a serious matter.
33. ACCA submitted every ACCA student has an obligation to co-operate fully with their professional body, and to engage with it when any complaints were raised against the individual.
34. ACCA submitted co-operation is fundamental to a regulator being able to discharge its obligations of ensuring protection of the public and upholding the reputation of the profession.
35. ACCA submitted failure to co-operate fully with ACCA is serious, undermining its opportunity to regulate the profession properly and failure to co-operate, if allowed to go unchecked, would undermine public confidence in the profession, and action needs to be taken in the public interest to uphold proper standards of conduct and behaviour.
36. ACCA submitted Mr Butt's conduct during the Corporate and Business Law exam amounts to a breach of the Examination Guidelines as he failed; to ensure he was without distractions, place smoking equipment out of sight and remove drinks, other than water, from his desk or on about his person before

the exam launched, contrary to Examination Regulation 1 which requires students to comply with the Examination Guidelines.

37. The Committee did not receive any oral submissions from Mr Butt, as he had not attended.
38. The Committee received and accepted the Legal Advice from the Legal Adviser. The Committee was advised that it was for the ACCA to prove the allegations on the balance of probabilities.
39. The Legal Adviser advised the Committee that only if the Committee found one or more of the allegations proved, it can go on to consider misconduct. The Committee was reminded that not all failures, omissions or acts will necessarily amount to misconduct. There is no burden or standard of proof. This a matter entirely for the Committee's judgement. The Committee was reminded that Bye-Law 8 (c) states Misconduct includes but is not confined to any act or omission which falls short of what would be proper in the circumstances and includes (but is not limited to) any act likely to bring discredit upon the relevant person, ACCA or the accountancy profession.
40. The Committee was referred to guidance in *Roylance v General Medical Council* (No.2) [2000] 1 A.C. 311, *Remedy UK Ltd v General Medical Council* [2010] EWHC 1245 (Admin), *Nandi v General Medical Council* [2004] EWHC 2317 (Admin). The Committee noted that the misconduct must be considered serious.
41. The Committee considered Allegation 1 and its particulars. It accepted that Mr Butt, as a student, was bound by the ACCA's Bye-laws and Regulations, including the Examination Regulations. However, the Committee could not be satisfied on the balance of probabilities that these rules and regulations applied as soon as Mr Butt logged on for his exam, where he was required to wait over 40 minutes before the exam was 'launched'.
42. The Committee, having regard to the video footage and screen recording of Mr Butt's exam, noted that it was not until minute 39.00 when 'Mr Butt confirms the

exam he is sitting' and '....that.... he has read, understood and agrees to abide by the exam regulations, and clicks continue to proceed to his exam'. The Committee was satisfied that in the circumstances of this case, the rules referred to in allegation 1 applied from this point onwards. In the circumstances, the Committee was not satisfied Allegation 1 (a), (b) or (c) was proved to the required standard.

43. The Committee considered Allegation 2 and its particulars. The Committee was provided with clear evidence that Mr Butt had failed to respond and co-operate with ACCA on 21 April 2021, 13 May 2021 and 28 May 2021.
44. The Committee noted that on 21 April 2021, ACCA sent a letter to Mr Butt's registered email address informing him of the complaint and seeking his response by 12 May 2021. The Committee noted that no response was provided by Mr Butt.
45. On 13 May 2021, ACCA sent a further letter to Mr Butt's registered email address reminding him of his obligation to co-operate with the investigation and seeking his response by 27 May 2021. Again, no response was provided by Mr Butt.
46. On 28 May 2021, ACCA sent a final letter to Mr Butt's registered email address reminding him again of his obligation to co-operate with the investigation and again seeking his response by 4 June 2021. No response was provided by Mr Butt.
47. The Committee was satisfied on the balance of probabilities that ACCA had proved this Allegation and all its particulars.
48. The Committee considered whether Mr Butt's actions amounted to misconduct. The Committee determined that co-operation with the regulator is of paramount importance. In the Committee's judgement, failure to co-operate with the regulator during its investigation is a very serious matter and risks undermining the regulatory process. The Committee determined Mr Butt's actions amounted to serious professional misconduct.

SANCTION AND REASONS

49. The Committee considered what sanction, if any, to impose taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions, and the principle of proportionality. It had listened to submissions from Ms Terry and to the legal advice from the Legal Adviser, which it accepted.
50. The Committee considered the available sanctions starting with the least serious. In reaching a decision on sanction, the Committee took into account the public interest and Mr Butt's own interests. It noted that the purpose of sanction was not punitive and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in the ACCA, and to declare and uphold proper standards of conduct and performance.
51. The Committee considered whether any mitigating or aggravating factors featured in this case.
52. The Committee accepted that there were no previous findings against Mr Butt. There was no evidence of any other mitigating factors in this case. The Committee had not heard from Mr Butt nor had it received any references or testimonials.
53. As for aggravating features, Mr Butt demonstrated a deliberate or at least reckless disregard for his regulator by his lack of co-operation over a period of time.
54. The Committee determined failing to co-operate with the regulator is a serious matter and therefore taking no further action, admonishment, reprimand or a severe reprimand would be inappropriate. The Committee was particularly mindful there was no early admission, no evidence of insight, reflection, remorse or apology from Mr Butt. In particular, there was no evidence of co-operation during the investigation stage. Given the serious nature of the

misconduct, the Committee determined the only appropriate and proportionate sanction available is to order the removal of Mr Butt from the Student Register.

COSTS AND REASONS

55. The Committee has been provided with a Detailed Costs Schedule.
56. The Committee concluded that ACCA was entitled to be awarded costs against Mr Butt. The amount of costs for which ACCA applied was five thousand eight hundred and fifty-one pounds and fifty-eight pence (£5,851.58). Taking into account the nature of the investigation, the Committee did not consider that the costs incurred were unreasonable.
57. The Committee noted that Mr Butt had failed to provide the Committee with details of his means. Mr Butt had chosen not to engage with the proceedings and had failed to respond to previous correspondence. However, the Notice of Proceedings had made it clear that, if ACCA proved any or all of the allegations, it would be applying for costs and that he should provide details of his means if he wished to suggest that he was not in a position to pay all or any of the costs claimed. In the absence of such information, the Committee approached the matter on the basis that Mr Butt was in a position to pay any amount of costs it was prepared to award.
58. In all the circumstances, the Committee exercised its discretion when determining the amount Mr Butt should be expected to pay. Taking account of what been said by Ms Terry, the Committee considered that it was reasonable and proportionate to award ACCA costs in full.

EFFECTIVE DATE OF ORDER

59. Taking into account all the circumstances, and on the application of ACCA, the Committee decided that it was necessary for the protection of the public, and in the interests of the public, for this order to take immediate effect.

60. In reaching its decision, the Committee took account of the fact that Mr Butt failed to engage with ACCA from the outset and therefore this Committee has no way of knowing if he will continue to hold himself out as a student member until the order takes effect.

Mrs Valerie Paterson
Chair
30 April 2024