

HEARING
DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF
CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Amol Samant

Heard on: Wednesday, 21 August 2024 and
Thursday, 22 August 2024

Location: Held remotely via Microsoft Teams

Committee: Mr Andrew Gell (Chair)
Dr David Horne (Accountant)
Ms Caroline Robertson (Lay)

Legal Adviser: Ms Tope Adeyemi

**Persons present
and capacity:** Mr Amol Samant (Student Member)
Mr James Halliday (Case Presenter)
Ms Lauren Clayton (Hearings Officer)
Ms Deepali Gaonkar (Interpreter)

Summary: Removed from the student register

Costs: £10,000.

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INTRODUCTION

1. The Disciplinary Committee (“the Committee”) met to hear allegations against Mr Amol Samant. Mr James Halliday appeared for ACCA. Mr Samant was in attendance but was not represented.
2. The papers before the Committee consisted of a hearing bundle (1-115), an additional Bundles (1-18), a service bundle (1-25) a supplementary bundle (1-43) and a two-page memorandum and agenda. The panel were also provided with documents contained in an adjournment hearing folder. The documents in that folder consisted of an additional bundle (1-21), a service bundle (1-18), adjournment reasons (1-4) and a correspondence bundle (1-15).

BRIEF BACKGROUND

3. Mr Samant became an ACCA registered student on 04 April 2018. By virtue of his registered status with ACCA, Mr Samant is bound by ACCA’s Bye-laws and Regulations, including the Exam Regulations and Guidance, and the Code of Ethics and Conduct.
4. Between 2020 and 2022, Mr Samant made multiple unsuccessful attempts at sitting ACCA’s Advanced Audit and Assurance (“AAA Exam”) and Advanced Performance Management exams (“APM Exam”).
5. In May 2022 a complaint referral was made to ACCA’s Professional Conduct Department on the basis that Mr Samant had sent a number of communications to ACCA staff that included unprofessional language and profanity. Additionally, it was alleged he had also offered payments to ACCA in order for ACCA to allow him to pass two ACCA exams that he had failed, namely the AAA Exam and the APM Exam.
6. On 25 July 2022, an email was sent to Mr Samant notifying him of the referral to ACCA’s Professional Conduct Department. Emails were received from Mr Samant outlining technical issues he experienced during exam attempts and requesting that ACCA give him membership, explaining the importance of ACCA Membership to him. Further, while Mr Samant accepted, he made offers of payment to ACCA, he denied those offers amounted to a bribe. When asked whether he considered the communications he sent ACCA to be offensive he

stated amongst other things that “*Any mistake I apologize. However I request for justice, one to one discussion resolution*”[sic].

ALLEGATIONS

7. The allegations faced by Mr Samant are set out below:

1) *Mr Amol Samant, an ACCA student, sent emails to ACCA on one or more of the following dates:*

- a) *02 December 2020;*
- b) *03 December 2020;*
- c) *18 July 2022;*
- d) *31 July 2022*

and, offered to make payments of £200, and or £500, to ACCA to enable him to obtain a pass mark in ACCA’s Advanced Audit and Assurance (“AAA Exam”), and Advanced Performance Management exams (“APM Exam”).

2) *Mr Samant’s conduct at allegations 1a – d, above was:*

- a) *dishonest in that the offering of such payments amounted to an attempt to bribe ACCA staff.*

3) *On one or more of the following dates, Mr Samant sent emails to ACCA in which he used grossly offensive language:*

- a) *14 May 2022;*
- b) *09 August 2022.*

4) *By reason of any or all of allegations 1 to 3 above Mr Samant is:*

- a) *Guilty of misconduct pursuant to bye-law 8(a)(i)*

APPLICATIONS

Admission of PowerPoint Slides

8. Prior to providing his evidence to the Committee Mr Samant stated that he wished to make a presentation using pre prepared PowerPoint slides. ACCA did not agree to the admission of the slides as evidence and therefore the Committee were asked to consider as a preliminary point whether the slides could be admitted into evidence.
9. Mr Samant made an oral application for the admission of the slides and explained that the purpose of his proposed presentation was to highlight the issues faced by those in developing countries who are studying on digital platforms. In objecting to the admission of the slides, Mr Halliday on behalf of ACCA submitted that their admission was being sought at a very late stage with no explanation as to why. Further, the slides appeared to be based on extensive research, the content of which ACCA were not in a position to verify or check.
10. Regulation 12 (2) (a) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 (CDR) state "*that subject to the requirements of justice and of fairness to the relevant person, a Disciplinary Committee considering any allegation may admit oral or documentary evidence whether or not such evidence would be admissible in a court of law. As a general principle, the Disciplinary Committee shall take into account the fact that any disputed oral evidence of a witness has not been tested in cross-examination when considering what weight, if any, should be attached to it*".
11. In considering whether to admit the evidence the Committee took into account that Mr Samant was not represented and that as a Committee it was able to decide what if any weight to place on the evidence. In all the circumstances the Committee agreed to accept the evidence in the form of the PowerPoint slides having determined it was fair and just to do so.

Request for private hearing

12. Following the Committee's announcement of its findings on facts, Mr Samant made a request for the whole of the hearing to be heard in private. He explained that as a career orientated person he wished the details of the proceedings to be kept out of the public domain. Mr Halliday stated that he had no objection to Mr Samant's personal matters being kept private but submitted that the findings of the Committee should be made public.

13. Regulation 11 (1) of the CDR state the following in regards to Private hearings:

“(a) Hearings of the Disciplinary Committee shall be conducted in public unless the Committee is satisfied:

(i) having given the parties, and any third party from whom the Disciplinary Committee considers it appropriate to hear, an opportunity to make representations; and

(ii) having obtained the advice of the legal adviser, that the particular circumstances of the case outweigh the public interest in holding the hearing in public, which may include but is not limited to prejudice to any of the parties”.

14. The Committee took into account the concerns raised by Mr Samant. It was also mindful that the public interest requires transparency of proceedings. The Committee did not consider that the personal circumstances outlined by Mr Samant outweighed the public interest in the proceedings being heard in public. The Committee therefore determined to decline the application.

DECISION ON FACTS AND REASONS

15. The Committee considered all the evidence presented and the submissions made by Mr Samant and Mr Halliday. Mr Samant admitted allegations 1 (a) – (d) and 3 (a) – (b), therefore those allegations were found proved by reason of admission. The Committee also accepted the advice of the Legal Adviser and bore in mind that it was for ACCA to prove its case and to do so on the balance of probabilities.

Allegations 1 (a) – (d) – Proved

16. These allegations were found proved by reason of admission.

Allegations 2 (a) – Proved

17. The Committee first considered whether there was evidence that Mr Samant's actions amounted to a bribe.
18. Mr Samant had accepted sending emails on a variety of dates between 02 December 2020 and 31 July 2022 in which he offered to make payments of

£200 and £500 to ACCA. In the email dated 02 December 2020 Mr Samant stated that *"I am ready to pay ACCA 200 GBP and assure I maintain complete confidentiality"*. In an email on 18 July 2022, Mr Samant wrote in bold letters within that he would *"contribute 500pounds [sic] as an ACCA help for passing prize as I want to achieve ACCA designation in June 2022"*.

19. The Committee also took into account the description of bribery in the Bribery Act 2010 relied on by ACCA:

"1 Offences of bribing another person

(1) A person ("P") is guilty of an offence if either of the following cases applies.

(2) Case 1 is where—

(a) P offers, promises or gives a financial or other advantage to another person, and

(b) P intends the advantage—

(i) to induce a person to perform improperly a relevant function or activity, or

(ii) to reward a person for the improper performance of such a function or activity.

(3) Case 2 is where—

(a) P offers, promises or gives a financial or other advantage to another person, and

(b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

(4) In case 1 it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.

(5) In cases 1 and 2 it does not matter whether the advantage is offered, promised or given by P directly or through a third party."

20. Mr Samant in his submissions stated that his comments about payment were "sarcastic" or arose from different forms of expression and did not constitute proper offers. The Committee considered these assertions to be inconsistent with the other evidence available, in particular the wording of the emails. Mr Samant had set out clearly in the emails the amounts of money he was offering, specifying in the email of 18 July that the point of offering the money was to

enable him to pass an ACCA exam. Further, under cross examination Mr Samant had accepted that his actions were intended as a bribe. Overall, the Committee was satisfied that the Mr Samant's actions in offering payments to ACCA on four dates between 02 December 2020 and 31 July 2022 amounted to a bribe.

21. The Committee considered whether Mr Samant acted dishonestly having regard to the test for dishonesty as set out in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67* (“Ivey”). The test was expressed at paragraph 76 of the court's judgement in the following terms:
22. *“When dishonesty is in question the fact-finding tribunal must first ascertain(subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”*
23. Mr Samant in his oral submissions stated that there had been a miscommunication. The Committee did not consider there to be evidence of this, rather, it found that his comments were very clear and that the wording of the emails showed that the offers of money were to enable him to pass an exam that he knew he had failed. The Committee were satisfied that such conduct was dishonest by the standards of ordinary decent people.

Allegation 3 (a) – (b)

24. These allegations were found proved by reason of admission.

Allegation 4 (a)

25. The Committee considered that Mr Samant's dishonesty and his actions in sending abusive emails to ACCA represented a clear falling of short of what

was expected of him and were very serious. It found his comments demonstrated a blatant disregard towards his obligations to his regulator, were discreditable to the accountancy profession and amounted to misconduct. The Committee therefore found Allegation 4 (a) proved.

SANCTION AND REASONS

26. In reaching its decision on sanction, the Committee took into account the submissions made by Mr Samant and by Mr Halliday. The Committee referred to the Guidance for Disciplinary Sanctions issued by ACCA effective from February 2024 and had in mind the fact that the purpose of sanctions was not to punish Mr Samant but to protect the public. Furthermore, any sanction must be proportionate. The Committee accepted the advice of the Legal Adviser and considered the sanctions, starting with the least serious sanction first.
27. The Committee turned first to consideration of the aggravating and mitigating features in this case. Mr Samant had repeatedly apologised for his actions and had made partial admissions to the allegations. Additionally, it was noted that Mr Samant stated he had become frustrated by technical issues connected to his ACCA exams, with his frustration being exacerbated by the effect of the pandemic and the associated communication difficulties. The Committee considered all these factors amounted to mitigation.
28. A number of aggravating features were noted. The Committee considered Mr Samant showed no insight into his conduct focussing only on the impact the behaviour had on him. At a point during his submissions, it was noted that Mr Samant asserted that his "*behaviour was ethically correct*". There was also no evidence of any remediation. Further, his dishonesty and offensive conduct were repeated, amounting to a pattern of misconduct that went on for approximately 18 months.
29. Set against those mitigating and aggravating factors and taking into account all the circumstances of the case, the Committee did not think it was appropriate, nor in the public interest, to take no further action. Neither did it consider it would be appropriate to order an admonishment in a case where (as here) a member had acted both in an offensive and dishonest manner.

30. The Committee then considered whether to reprimand Mr Samant. The guidance indicates that a reprimand would be appropriate in cases where the conduct is of a minor nature and there is sufficient evidence of an individual's understanding and genuine insight into the conduct found proved. The guidance goes on to state that a reprimand may be appropriate where the conduct was not in deliberate disregard of professional obligations, and the period of misconduct was stopped as soon as possible. The Committee did not find those factors to be present in the current instance. The Committee had found his conduct to be deliberate, repeated and in flagrant disregard of his professional obligations. It was also not considered to be minor in nature.
31. The Committee moved on to consider whether a severe reprimand would adequately reflect the seriousness of the case. The guidance indicates that such a sanction would usually be applied in situations where the conduct is of a serious nature but 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 that corrective steps had been taken to cure the conduct and ensure such behaviour was not repeated. The Committee was not provided with evidence to show these criteria to be met. No evidence had been marshalled of any rehabilitative steps that had been taken by Mr Samant to ensure the behaviour would not re-occur and, overall, the conduct was considered too serious for a severe reprimand.
32. The Committee went on to consider the guidance relating to removal from the student register. Mr Samant had acted dishonestly, with the Committee reaching the view that such dishonesty had been serious. His misconduct had created a risk of reputational harm to the profession as Mr Samant was attempting to procure a pass mark for exams he had failed and in turn gain membership to ACCA in circumstances where he had not demonstrated he met the criteria. In all the circumstances the Committee considered removal from the student register to be the most appropriate and proportionate sanction.

COSTS AND REASONS

33. ACCA applied for costs in the sum of £12,793.00. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing. A simplified breakdown was also provided. Mr Samant submitted a Statement of Financial Position and provided oral

submissions in respect of his circumstances. While the Committee took into account the information contained in Mr Samant's Statement of Financial Position it was unable to place much weight on the content as no supporting evidence had been provided.

34. The Committee was satisfied ACCA were entitled to claim its costs. However, it was considered that Mr Samant should not bear the full costs of the original hearing which had been adjourned due to a lack of an interpreter. A reduction to the amount sought was made and Mr Samant is ordered to pay ACCA's costs in the sum of £10,000.

EFFECTIVE DATE OF ORDER

35. The Committee decided that the order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

Andrew Gell
Chair
22 August 2024