

**HEARING**

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

**REASONS FOR DECISION**

<b>In the matter of:</b>	<b>Mr Shashank Uttam</b>
<b>Heard on:</b>	<b>Thursday, 08 February 2024</b>
<b>Location:</b>	<b>Remote via Microsoft Teams</b>
<b>Committee:</b>	<b>Ms Wendy Yeadon (Chair) Mr Trevor Faulkner (Accountant) Ms Samantha Lipkowska (Lay)</b>
<b>Legal Adviser:</b>	<b>Mr Robin Havard</b>
<b>Persons present and capacity:</b>	<b>Mr Adam Slack (ACCA Case Presenter) Ms Lauren Clayton (Hearings Officer)</b>
<b>Summary</b>	<b>Removed from the student register</b>
<b>Costs:</b>	<b>£5,500</b>

**PRELIMINARY APPLICATIONS**

**SERVICE OF PAPERS**

1. The Committee had considered the following documents: a hearing bundle (pages 1 to 74), a video recording of the exam session on 15 February 2023,

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- and a service bundle (pages 1 to 19). The Committee had also considered legal advice which it had accepted.
2. The Committee had read the letter dated 11 January 2024 containing the Notice of Proceedings, sent on the same day by ACCA by email to Mr Uttam. It had noted the subsequent emails sent to Mr Uttam with the necessary link and password to enable Mr Uttam to gain access to the letter and the documents relating to this hearing.
  3. The Committee was satisfied that such emails had been sent to his registered email address in accordance with regulation 22 of the Complaints and Disciplinary Regulations 2014 as amended ("CDR"). The Committee had noted that the emails had been delivered successfully. The emails and the documents to which Mr Uttam had access also contained the necessary information in accordance with CDR10.
  4. Consequently, the Committee decided that there had been effective service of proceedings on Mr Uttam in accordance with CDR.

#### **PROCEEDING IN ABSENCE**

5. On 24 January 2024, in the absence of any response from Mr Uttam to the email of 11 January 2024, ACCA sent an email to Mr Uttam at the registered email address asking him to indicate whether he intended to attend the hearing or whether he was content for the hearing to proceed in his absence. The email reminded him of the date of hearing and of his ability to join the hearing either by telephone or video link. The email had been delivered successfully. There was no response.
6. On 06 February 2024, ACCA attempted to call Mr Uttam on the number registered with ACCA but there was no response nor was there the option to leave a message.
7. On 06 February 2024, ACCA sent a further email to Mr Uttam, again reminding him of the date of hearing and asking him to confirm if he was content for the hearing to proceed in his absence. He was also asked to send to ACCA any documents on which he wished to rely if he did attend the hearing. There was no response.

8. On 07 February 2024, ACCA sent another email to Mr Uttam. This email contained the link necessary for Mr Uttam to join the hearing.
9. The Committee was satisfied that ACCA had done all that it could reasonably be expected to do to engage Mr Uttam in the hearing. However, the Committee concluded that Mr Uttam was aware of the hearing date but that he had no intention of participating in the hearing, nor had he requested an adjournment.
10. The Committee concluded that Mr Uttam had voluntarily absented himself from the hearing, which he could have joined by telephone or video link. He had therefore waived his right to attend. In reaching this conclusion, the Committee also took into account the failure on the part of Mr Uttam to respond to any of the correspondence that formed the substance of allegation 2.
11. The Committee was also satisfied that, taking account of 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, as stated, no such application had been made.
12. Finally, the Committee considered that it was in a position to reach proper findings of fact on the evidence presented to it by ACCA.
13. The Committee ordered that the hearing should proceed in the absence of Mr Uttam.

## **ALLEGATIONS**

Mr Shashank Uttam ("Mr Uttam), an Association of Chartered Certified Accountants ('ACCA') student:

- 1) On 15 February 2023 during an on-demand MA1 Management Information exam (the Exam):
  - a) Whispered and or spoke out aloud during the exam, contrary to Examination Regulation 16
- 2) Contrary to Regulation 3(1) of the Complaints & Disciplinary Regulations 2014

(as amended), Mr Uttam failed to co-operate with the investigation of a complaint, in that he did not respond to any or all of ACCA's correspondence dated:

- a. 27 February 2023
- b. 27 March 2023
- c. 14 April 2023
- d. 29 June 2023

3) By reason of his conduct, Mr Uttam is:

- a. Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the above matters or, in the alternative,
- b. Liable to disciplinary action pursuant to bye-law 8(a)(iii).

## **DECISION ON FACTS, ALLEGATIONS AND REASONS**

### **Allegation 1(a)**

14. In reaching its findings in respect of allegation 1(a), the Committee relied upon the email correspondence and documents contained in ACCA's bundle and noted the Incident Report provided by the proctor (i.e. a remote exam invigilator) prepared following the exam. It had also viewed the video footage from the video taken on 15 February 2023. The Committee had taken account of the submissions of Mr Slack. The Committee also listened to legal advice, which it accepted.
15. The Committee took into consideration that the case as presented by ACCA had not been challenged by Mr Uttam.
16. On 22 September 2022, ACCA registered Mr Uttam as a student. As such, the Committee found that, throughout the material time, he was bound by ACCA's Bye-laws and Regulations. The Committee found that this included the Examination Regulations which were provided to Mr Uttam prior to him sitting the exam.
17. Examination Regulation 1 provides as follows:

*"You are required to adhere at all times to the examination regulations. If you are found to be in breach of any of these regulations or fail to adhere to the guidelines below, you may become liable to disciplinary action, pursuant to ACCA Bye-law 8, which could result in your removal from the student register."*

18. On 15 February 2023, Mr Uttam was due to take an on-demand MA1 Management Information examination (the 'Exam') remotely. On 15 February 2023, the online proctor (the remote invigilator) filed an Incident Report in respect of conduct observed during the Exam. The proctor noted that Mr Uttam was whispering and speaking aloud during the exam.
19. The Committee had considered a copy of the chatlog between the student and proctor taken during the exam.
20. An investigation was commenced. This involved obtaining documents and video footage relating to the Exam. ACCA relied upon the following extracts from the video footage:
  - At 8:00, Mr Uttam leaves his seat.
  - At 9:57, the footage jumps, and Mr Uttam can be seen in his seat.
  - At 10:03, Mr Uttam can be heard speaking.
  - At 10:52, Mr Uttam turns to his right-hand side and appear to be speaking to another person who is close by.
  - At 10:55, Mr Uttam takes a call from his mobile phone.
  - At 12:10, another person can be seen behind Mr Uttam.
  - At 12:36-13:00, 13:50-13:53, 14:38-15:00, 15:56-16:01 and 16:54-16:56, Mr Uttam can be heard speaking with another person.
  - At 21:35, the footage jumps.
  - At 23:39, Mr Uttam can be seen touching his nose. As he does this, it

appears handwriting is seen on the inner part of his hand.

- At 29:41, Mr Uttam can be seen on his mobile phone. There is no audio.
- At 30:19 and 36:45, the footage jumps.
- At 52:40, Mr Uttam reach off screen for his mobile phone. He later places this out of arm's reach to his right-hand side.
- At 56:20, the video footage jumps. Mr Uttam can be seen in a different room than the one before.
- At 1:00:00, another person is seen in the room. It appears they were permitted to do so as on the phone call to the proctor prior to the person entering Mr Uttam said to the proctor that he needs to call his brother.
- At 1:01:56, the footage jumps.
- At 1:11:23, Mr Uttam shows the back and front of his hands.
- At 1:12:54-1:14:30, Mr Uttam performs a camera pan of the room and shows his desk to the camera.
- Between 1:26:40 and 1:27:20, is when we believe Mr Uttam's exam started.
- Between 1:27:07 and 3:13:32, there are multiple instances where Mr Uttam appears to be reading the exam content on his screen aloud. For example, at 1:27:10- 1:28:02, 1:34:45- 1:35:32, 1:37:02 – 1:38:53, 1:50:11 – 1:52:00, 2:05:54 – 2:06:23.
- At 3:17:06-3:18:08, Mr Uttam perform a camera pan of the room and show the camera underneath your desk.
- At 3:20:58, Mr Uttam said "mam I've finished".
- At 3:21:20, Mr Uttam appeared to be speaking to the proctor. Mr Uttam rips up his scratch paper in front of the camera.

- At 3:22:33-3:22:36, Mr Uttam appears to say something in his native language.
  - At 3:23:18, Mr Uttam briefly turns to his right-hand side and appears to whisper something. A third party's voice can be heard.
  - At 3:24:54 Mr Uttam leans forwards in his chair and whispering can be heard.
21. ACCA submitted that Mr Uttam whispered and/or spoke aloud during the exam, contrary to Examination Regulation 16 which states:
- “Candidates must not whisper or speak out loud during the exam or communicate or attempt to communicate with any person other than the exam supervisor(s), invigilator(s) or remote invigilator(s) or proctor(s). This includes from the time that you log into the remote proctoring platform until 5 minutes after the time that you submit your exam, or your exam is terminated (whether by you or anyone or anything else)”.*
22. Having watched the video, the Committee was satisfied that the outline provided by ACCA was an accurate account of Mr Uttam's behaviour during the exam and found that he had behaved in the manner alleged in paragraph 20 above.
23. Mr Uttam had not responded to ACCA's enquiries regarding the above allegation.
24. In reaching its findings, the Committee relied on the video evidence, the chat log, and the proctor's Investigation Report. The Committee found that, throughout the exam on 15 February 2023, Mr Uttam had whispered and/or spoken aloud. Such behaviour was, at times, obvious, with other persons being present in the room or Mr Uttam speaking to someone on the phone.
25. Consequently, the Committee was satisfied that Mr Uttam had failed to follow the Examination Guidance and had therefore acted in breach of Examination Regulation 16.

26. On this basis, the Committee found allegation 1(a) proved.

### **Allegation 2**

27. Having seen Mr Uttam's details on ACCA's register, the Committee was satisfied that all emails were sent to Mr Uttam at an email address he had registered with ACCA. The email address had not changed throughout the course of the investigation. None of the emails had been returned or bounced back into the case management system.
28. On 27 February 2023, ACCA sent an email to Mr Uttam's registered email address informing him of the complaint regarding his conduct during the exam on 15 February 2023. ACCA requested him to respond by 20 March 2023. Within this letter, ACCA set out its observations regarding Mr Uttam's behaviour as illustrated on the video footage. Mr Uttam was then asked a number of questions which required him to explain why he was whispering and/or speaking during the exam.
29. The letter contained the following paragraph:

#### ***"Duty to co-operate***

*In accordance with Complaints and Disciplinary Regulation 3(1), you are required to co-operate with this investigation. A failure or partial failure to co-operate fully with the investigation may render you liable to disciplinary action."*

30. Mr Uttam failed to respond.
31. On 27 March 2023, ACCA sent an email to Mr Uttam's registered email address reminding him of his obligation to co-operate with the investigation and seeking his response to the letter of 27 February 2023 by 10 April 2023. The letter of 27 February 2023 was attached.
32. Mr Uttam failed to respond.
33. On 14 April 2023, ACCA sent a further email to Mr Uttam's registered email address reminding him of his obligation to co-operate and again seeking his response by 28 April 2023. Mr Uttam was warned that an allegation would be



raised against him if he did not respond. This email was accompanied by a copy of the letters from 27 February 2023 and 27 March 2023.

34. Mr Uttam failed to respond.
35. On 25 April 2023 and 29 June 2023 telephone calls were made to Mr Uttam on the number registered with ACCA. However, the calls were not answered.
36. A final email was then sent on 29 June 2023 to his registered email address, attaching a copy of their initial letter of 27 February 2023. Mr Uttam was given further time until 06 July 2023 in which to respond. The email contained a warning that, if he did not respond, his failure to do so would be added as an allegation against him in these proceedings.
37. Once again, Mr Uttam failed to respond.
38. The Committee was satisfied that the emails of 27 February 2023, 27 March 2023, 14 April 2023 and 29 June 2023 had been sent to the correct email address of Mr Uttam. Indeed, it was the email address that he had provided to ACCA to be included on the register when he became a student member in September 2022, just a few months beforehand. There was no indication that the emails had not been delivered successfully.
39. The Committee was satisfied, on the balance of probabilities, that the emails had been received by Mr Uttam and that he had failed to respond. This amounted to a failure to cooperate with ACCA in the course of its investigation and on this basis, the Committee found allegation 2 proved.

### **Allegation 3(a)**

40. Taking account of its findings in respect of allegations 1(a) and 2 regarding Mr Uttam's conduct during, and following, the examination, the Committee was satisfied that he was guilty of misconduct in that such conduct could properly be described as deplorable. In the Committee's judgement, it brought discredit to Mr Uttam, the Association and the accountancy profession.
41. In respect of allegation 2, the Committee had found that, despite ACCA providing a number of reminders of his obligation to cooperate and warnings of

potential consequences of his failure to do so, Mr Uttam had failed persistently to cooperate with ACCA and to respond to correspondence.

42. The need for members, including student members, to engage and cooperate with their regulator was fundamental. A failure by members to do so meant that ACCA's ability to regulate its members in order to: ensure proper standards of conduct; protect the public, and to maintain its reputation was seriously compromised.
43. The Committee found that the failure of Mr Uttam to cooperate with his regulator amounted to misconduct in that such failure brought discredit to himself, ACCA and the accountancy profession.
44. Therefore, the Committee found allegation 3(a) proved.

#### **Allegation 3(b)**

45. On the basis that this allegation was pleaded in the alternative to allegation 3(a), the Committee made no finding in respect of it.

#### **SANCTION AND REASONS**

46. 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 also listened to the submissions of Mr Slack, and legal advice from the Legal Adviser which it accepted.
47. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no order.
48. The Committee was mindful of the fact that its role was not to be punitive and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in ACCA, and to declare and uphold proper standards of conduct and performance.

49. The Committee considered whether any mitigating or aggravating factors featured in this case.
50. The Committee accepted that there were no previous findings against Mr Uttam. However, the Committee took into consideration the fact that, at the time the exam took place, Mr Uttam had only been a student member since 22 September 2022 i.e. just over four months before he sat the exam.
51. The Committee had no information regarding the personal circumstances of Mr Uttam nor had it been provided with any testimonials or references as to Mr Uttam's character. Indeed, there had been no engagement by Mr Uttam in the course of the proceedings.
52. As a consequence, the Committee was not satisfied that Mr Uttam had shown any insight into the seriousness of his conduct and he had not expressed any remorse.
53. The Committee had found Mr Uttam to have acted improperly during the course of an exam and that he had failed to engage with ACCA during its investigation, both of which the Committee considered to be very serious.
54. The Committee found such serious conduct to be aggravated in the following ways.
55. As stated, Mr Uttam had shown neither insight nor contrition. His lack of cooperation had also extended over a period of months and therefore, again, it could not be described as an isolated incident.
56. On the basis of its findings, the Committee concluded that neither an admonishment nor a reprimand would represent a sufficient and proportionate outcome. Neither sanction would adequately reflect the seriousness of the Committee's findings.
57. The Committee then considered whether a severe reprimand would be an appropriate sanction. Again, taking account of the seriousness of its findings, and reflecting on the criteria suggested in the Guidance, the Committee did not consider that a severe reprimand would be sufficient or proportionate.

58. The whole purpose of the Exam Regulations is to maintain the integrity of the process to ensure that the process is fair and that, in following that process and complying with the Regulations, it represents a proper test as to a person's competence to become an accountant.
59. Mr Uttam had also failed persistently to cooperate with his regulator, ACCA, in respect of an investigation of potentially serious allegations. His conduct during the exam and his lack of engagement in relation to the investigation of such conduct represented conduct which was fundamentally incompatible with being a student member of ACCA. His lack of engagement and his failure to show any insight or contrition for his lack of cooperation, led the Committee to conclude that, currently, there was no guarantee that Mr Uttam would behave in a manner expected of a member of ACCA.
60. The Committee had considered whether there were any reasons which were so exceptional or remarkable that it would not be necessary to remove Mr Uttam from the student register but could find none.
61. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Mr Uttam shall be removed from the student register.

### **COSTS AND REASONS**

62. The Committee had been provided with a simple costs schedule (page 1) and a detailed costs schedule (pages 1 and 2) relating to ACCA's claim for costs.
63. The Committee concluded that ACCA was entitled to be awarded costs against Mr Uttam, all allegations having been found proved. The amount of costs for which ACCA applied was £6,243. The Committee did not consider that the claim was unreasonable but the hearing had taken less time than estimated.
64. Mr Uttam had not provided ACCA with any documentary evidence of his means. The Committee was satisfied that, in the correspondence sent to him, Mr Uttam had been warned at the outset of the importance of providing details of his financial circumstances and of ACCA's intention to apply for costs.

65. In the absence of any information from Mr Uttam, the Committee approached its assessment on the basis that he was able to pay any amount of costs awarded against him.
66. In all the circumstances, and in exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £5,500.00.

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

67. The Committee had considered whether the order should have immediate effect. However, ACCA did not seek such an order and, taking account of Mr Uttam's removal from the student register, the Committee did not consider that he presented a current risk to the public. It therefore concluded it was not in the interests of the public to make an order which takes effect immediately.
68. The Committee decided that this order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

**Ms Wendy Yeadon**  
**Chair**  
**08 February 2024**