

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Muhammad Faseeh

Heard on: Wednesday, 05 June 2024, Thursday, 06 June 2024

Location: Held Remotely via Microsoft Teams

Committee: Mr Martin Winter (Chair)
Mr George Wood (Accountant)
Ms Yvonne Walsh (Lay)

Legal Adviser: Mr Ashraf Khan (Legal Adviser)

**Persons present
and capacity:** Mr Adam Slack (ACCA Case Presenter)
Miss Nicole Boateng (Hearings Officer)

Summary Removed from the student register

Costs: £8,899.75

INTRODUCTION

1. The Disciplinary Committee (“the Committee”) met to hear allegations against Mr Mohammed Faseeh. The hearing was scheduled to last two days. Mr

ACCA



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Faseeh did not attend and he was not represented. ACCA was represented by Mr Adam Slack.

2. The papers before the Committee consisted of a Bundle consisting of 133 pages, a Service Bundle consisting of 20 pages and an Additional Bundles Bundle consisting of 5 pages. The Committee also viewed recording of Mr Faseeh's examination of 56 minutes and 2 seconds duration. During the hearing, the Committee was provided with further Tabled Additional Bundles Bundle consisting of 12 pages.

PRELIMINARY APPLICATIONS

Service of Papers

3. The Committee was informed that Mr Faseeh had been served with a notice of today's hearing and all the above papers via his registered email address on 8 May 2024.
4. The Committee was satisfied that emails had been sent to Mr Faseeh'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 Faseeh has been given 28 days' notice with the necessary information required in accordance with CDR10.
5. The Committee decided that Mr Faseeh had been properly served with Notice of Proceedings.

Proceeding in absence

6. The Committee noted that on 16 May 2024, ACCA called Mr Faseeh on the mobile number registered with ACCA. The call was answered by Mr Faseeh who confirmed he would be attending the hearing and does not require an Interpreter. On the same day, ACCA emailed Mr Faseeh confirming the earlier telephone conversation.

7. On 03 June 2024, ACCA emailed Mr Faseeh a Microsoft Teams link to join the hearing on 05 and 06 June 2024. He was advised to join the link at 8am for preliminary discussions with the Case Presenter and Legal Adviser.
8. On 05 June 2024, at 8.05am ACCA called Mr Faseeh to remind him of his hearing starting today. Mr Faseeh answered the call. He stated that he has an upcoming exam on Monday and for that reason, he would not be able to attend today's hearing. He stated he was happy with whatever decision the Committee would make. At 8.44am the same day, ACCA emailed Mr Faseeh noting the contents of the earlier conversation.
9. The Committee considered that ACCA had done everything possible to enable Mr Faseeh 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. The Committee noted that Mr Faseeh had decided not to attend and agreed to the hearing proceeding in his absence. The Committee concluded, on the balance of probabilities, that Mr Faseeh was aware of today's hearing and had voluntarily absented himself.
10. The Committee was also satisfied that, taking into 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 no such application had been made.

BACKGROUND

11. On 12 November 2019, ACCA registered Mr Faseeh as a student. As such, he is bound by the Association's Bye-laws and Regulations, including the Examination Regulations.
12. On 02 March 2021, Mr Faseeh sat his MA2 Managing Costs and Finance examination (the 'exam') remotely. Suspicious behaviour was noted by the Proctor (remote Invigilator) in the Incident Report.
13. An investigation was commenced. This has involved obtaining documents and video footage relating to the exam and the events occurring during the exam as set out below.

14. On 12 April and 10 May 2021, ACCA wrote to Mr Faseeh seeking his response to questions regarding a shadow in a door which can be seen changing after a buzzing sound can be heard at 34:34-34:40 in the video footage and two shadows on the wall at 43:45 whilst a camera pan of the room is performed. Mr Faseeh responded on 9 May and 24 May 2021.
15. On 15 October 2021, ACCA wrote to Mr Faseeh again, seeking his response to supplementary questions regarding whispering that can be heard in the video footage at 42:30-42:31 which led to Mr Faseeh changing an answer to a question he had on screen. Mr Faseeh responded on 15 October 2021.
16. ACCA contend that Mr Faseeh had engaged in improper conduct designed to assist himself in his exam attempt by causing or permit a third party to be present during all or part of the exam and/or to provide a prompt to an answer he had on screen during the exam and that this was, in turn, dishonest or otherwise a breach of the Fundamental Principle of Integrity.
17. The allegations above are supported by the Incident Report where the Proctor noted *“A whisper sound of another individual can be heard ... and continued throughout the testing session”* and *“A shadow was seen passing by ... in the video recording”*, and the key incidents in the video footage and the screen recording which are highlighted in the chronology below:
 - At 00:11-00:30 and 1:07-1:10, whispering between Mr Faseeh and another person can be heard.
 - At 6:30-9:28, a camera pan is performed. Mr Faseeh shows the Proctor his desk, turns the key to the door, says to the proctor the door is locked, and moves and sits in front of the door.
 - Between 13:10 and 13:50, the exam is launched.
 - At 34:33-34:40, a buzzing sound can be heard. Noises of movement can be heard. The shadow reflecting off the door behind Mr Faseeh, to his right-hand side, changes. Mr Faseeh briefly looks to his right-hand side when this happens.
 - At 34:47, whilst whispering can be heard, a shadow reflecting off the door to Mr Faseeh’s right-hand side can be seen changing. The shadow moves from left to right.
 - At 41:35-41:40, whispering from another person can be heard.
 - At 42:10-42:17, Mr Faseeh can be heard whispering with another person.

- At 42:30-42:31 minutes into the video footage, it appears whispering from a third party can be heard. More specifically:
 - The numbers “8275” can be heard.
 - After these numbers are whispered from what appears to be from a third party, Mr Faseeh changes the answer he had already typed in on screen, “9274”, by deleting the “4” and adding a “5”, changing his answer to “9275” (Question 16). The answer Mr Faseeh typed in on screen, to some extent matches up with the numbers that are whispered.
 - At 43:39-45:27, a camera pan is performed. Mr Faseeh shows the Proctor his desk, the windows behind the curtains and the door to the washroom.
 - At 43:45, whilst a camera pan is being performed, two shadows of the outline of a person can be seen on the wall.
 - Between 54:30 and 55:30, the exam is terminated.
18. On 03 April 2024, ACCA wrote to Mr Faseeh requesting he complete and return his Case Management Form (CMF). Mr Faseeh set out his responses in an email to ACCA on 23 April 2024, stating:

‘5.1) I M.Faseeh states that i was all alone in the room of exam and no one provided me nothing with any help.

5.2) As in the start or before starting of exam i showed full room to the invigilator where i attempt the exam and no one was found.

5.3) As no one was present in the room with me so i havn’t [sic] taken any advantage of.’

6) No i don’t admit any of these aligations. read 5.2 [sic]

6.1) No

Response=Court can read any document. But i object that ACCA cannit handle to check full room properly so why they conducted home based exam and waste student’s time and if they were properly able to check the room so why and how they stopped me during my exam due to which i’ve lost my precious time and money as well. As i don’t have any witness but my cousion [sic] was present in my house and he can tell you that were alone into the room...’.

ALLEGATIONS

Mr Muhammad Faseeh (‘Mr Faseeh’), a student of the Association of Chartered Certified Accountants (‘ACCA’):

1. On 2 March 2021, during a remotely invigilated MA2 Managing Costs and Finance examination (the 'exam') engaged in improper conduct designed to assist himself in his exam attempt in that he caused or permitted a third party to be present during all or part of the exam and/or to provide a prompt to an answer he had on screen during the exam.
2. Mr Faseeh's conduct referred to in paragraph 1 above was in breach of:
 - a) Examination Regulation 10; and/or
 - b) Examination Regulation 2 by failing to comply with instructions issued by ACCA personnel (as per the Student Information Sheet) before and/or during the exam, in that he failed to ensure no one else was around him in the room where he sat his exam.
3. Further, Mr Faseeh's conduct as referred to in paragraphs 1 and/or 2 above was:
 - a) Dishonest, in that Mr Faseeh sought to obtain an unfair advantage in the exam by obtaining assistance from a third party; or in the alternative,
 - b) Contrary to the Fundamental Principle of Integrity (as applicable in 2021) in that such conduct is not straightforward and honest.
4. By reason of his conduct, Mr Faseeh 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, 2 and/or 3 above; or, in the alternative,
 - b) Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of Allegation 2.

DECISION ON FACTS/ALLEGATIONS AND REASONS

19. The Committee took into account ACCA's written representation which were supplemented by Mr Slack orally. The Committee took into account written

responses from Mr Faseeh. The Committee considered legal advice from the Legal Adviser, which it accepted.

20. ACCA submitted that the allegations are capable of proof by reference to the documents in the bundle of documents and the video footage of Mr Faseeh's exam.
21. In relation to the issue of dishonesty, ACCA submitted that the conduct set out at Allegations 1 and/or 2 amounts to dishonesty because Mr Faseeh knew that he was not permitted to try and obtain assistance from a third party when he was sitting his exam as this might give him an unfair advantage in that exam. Such conduct is objectively dishonest.
22. The Committee was referred to the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 where Lord Hughes at paragraph 74 provided the following guidance on the issue of dishonesty:

'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. In relation to the issue of integrity, ACCA submitted that the Fundamental Principle of Integrity requires members to be straightforward and honest. Integrity also implies fair dealing and truthfulness. The Committee was referred to *R (on the application of May) v The Chartered Institute of Management Accountants* [2013] EWHC 1574 (Admin), where Stadlen J considered the framework that governed the proceedings of CIMA and its standard of integrity. The determination stated (at paragraphs 155 and 156):

'[155] When applied to human conduct or behaviour, the word straightforward is commonly used in the sense of honest and frank, not circuitous or evasive,

honest and open, not trying to trick somebody or to hide something. In other words it is broadly synonymous with honest.

[156] This is in my judgment reflected in the fact that the s 100.4 (a) duty had the single heading: "Integrity". Integrity itself when used in the sense of a human quality is broadly synonymous with honesty...'

24. The Committee was also referred to *Wingate and Evans v The Solicitors Regulation Authority* [2018] EWCA Civ 366, where the Court of Appeal addressed what was required in a professional disciplinary context by the standard of integrity. At paragraphs 95 to 97, Jackson LJ expressed the matter in a way that applied to regulated professions generally. He said this:

'95. Let me now turn to integrity. As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty...

96. Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted.

97. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.'

25. In relation to the issue of misconduct, ACCA referred the Committee to Bye-law 8(a)(i), 8(c), 8(d) which refer to misconduct. In order for Mr Faseeh's conduct to amount to a breach of bye-law 8(a)(i) it must amount to misconduct.

26. Bye-law 8(c) states that *"for the purpose of bye-law 8(a), misconduct includes (but is not confined to) any act or omission which brings, or is likely to bring, discredit to the individual or relevant firm or to the Association or to the accountancy profession."*

27. Bye-law 8(d) provides that when assessing the conduct in question, regard may be had to the following:-

- (a) Whether an act or omission, which of itself may not amount to misconduct, has taken place on more than one occasion, such that together the acts or omissions may amount to misconduct;

- (b) Whether the acts or omissions have amounted to or involved dishonesty on the part of the individual or relevant firm in question; and
 - (c) The nature, extent, or degree of a breach of any code of practice, ethical or technical, adopted by the Council, and to any regulation affecting members, relevant firms or registered students laid down or approved by Council.
28. The Committee were referred to the case of *Roylance v General Medical Council* [2001] 1 AC 311 where it was said *'the meaning of this term (ie misconduct) is of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety in any given case may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances'*.
29. ACCA submitted for the Committee to conclude that the facts found proved amount to misconduct, it must be satisfied that the misconduct is serious. Misconduct is a matter for the Disciplinary Committee's professional judgment.
30. ACCA submitted that the facts that underly the allegations, if proved, amount to misconduct, both individually and when considered in their totality, in that the conduct alleged brings discredit to Mr Faseeh, ACCA and the accountancy profession.
31. ACCA submitted Mr Faseeh's conduct has breached the exam regulations. However, if the Committee is not persuaded that any conduct found proved amounts to misconduct, then Mr Faseeh is liable to disciplinary action pursuant to be-law 8(a)(iii).
32. The Committee did not receive any oral submissions from Mr Faseeh, as he had not attended. However, the Committee noted Mr Faseeh's responses to ACCA.
33. 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. The Committee noted Mr Faseeh was of good character.

34. 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.
35. The Committee was referred to guidance in *Roylance v General Medical Council* (No.2) [2000] 1 A.C. 311. The Committee noted that the misconduct must be considered serious.
36. The Committee accepted that Mr Faseeh, as a student, was bound by the ACCA's Bye-laws and Regulations, including the Examination Regulations.
37. The Committee considered Allegation 1. The Committee observed that the quality of the video varied. It concluded the video was poorer in quality than the audio. The Committee noted that aside from exchanges in English, there were also exchanges between Mr Faseeh and at least one other in a different language. There was no evidence of what was being said in the foreign language. Nevertheless, having carefully considered the video and taking into account the general behaviour of Mr Faseeh, the Committee was satisfied that there must have been another person in the room with him at some point from when the exam was launched at 13.10, providing assistance during the exam. In particular, the Committee observed that during 42.30 and 42.31 an unknown third party could be heard whispering '8275', causing Mr Faseeh to change his original answer from '9274' to '9275'. Mr Faseeh appeared to hold a calculator towards his mouth. The Committee inferred he was attempting to disguise his conversation with the third party. The Committee noted Mr Faseeh's written comments that at this time he stated that he was talking to himself but it concluded it was more likely than not he was communicating with an unknown third party in the room.
38. Taking into account all the evidence, the Committee was satisfied on the balance of probabilities that ACCA had proved Allegation 1.

39. The Committee considered Allegation 2. Given its finding in relation Allegation 1, the Committee concluded that Mr Faseeh's conduct did breach Examination Regulation 10 and 2. The Committee therefore found Allegation 2 and its particulars proved on the balance of probabilities.
40. The Committee considered Allegation 3a. The Committee determined Mr Faseeh knew he was doing an ACCA exam and that a third party was in the room with him whispering prompts to assist him. The Committee concluded Mr Faseeh must have known this was clearly wrong and dishonest. The Committee went on to consider whether Mr Faseeh's conduct was dishonest by the standards of ordinary decent people. The Committee concluded ordinary decent people would conclude Mr Faseeh's conduct was clearly dishonest in accordance with the test laid out in the case of *Ivey v Genting Casinos*. The Committee found Allegation 3a proven on the balance of probabilities and therefore did not need to consider Allegation 3b, which was charged in the alternative.
41. The Committee considered Allegation 4a. The Committee considered whether Mr Faseeh's actions amounted to misconduct. Taking into account Bye-law 8 as to the meaning of misconduct and further guidance given in *Roylance v General Medical Council (No.2)* [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin) and *Lawrence v General Medical Council* [2015] EWHC 586 , the Committee determined that cheating with a view to seeking to gain an advantage during the exam is a very serious act of dishonesty and amounts to misconduct. The Committee decided this must have been pre-planned. Given the Committee's finding in relation to Allegation 4a, it did not need to consider Allegation 4b, which was charged in the alternative.

SANCTION AND REASONS

42. Given the Committee have found all allegations proved, it deemed it fair to give Mr Faseeh a further opportunity to take part in these proceedings before it considered sanction and/or costs. The Committee decided Mr Faseeh should be given a further opportunity to reflect and address the Committee, if he so chooses the following morning or provide written representations. The Committee adjourned until 06 June 2024 and put into place arrangements for ACCA to contact Mr Faseeh.

43. The Committee reconvened the following morning. Once again, Mr Faseeh had chosen not to attend. The Committee was provided with a Tabled Additional Bundle 1-12 pages. The Committee noted that in email correspondence with ACCA, Mr Faseeh stated he was a student and with no means to pay any costs at all. He made no submissions regarding sanction.
44. The Committee decided it would be fair and in the public interest to continue with the hearing. The Committee considered what sanction, if any, to impose taking into account all the evidence, ACCA's Guidance on Sanctions and Costs and the principle of proportionality. It had listened to submissions from Mr Slack and to the legal advice from the Legal Adviser, which it accepted.
45. 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 Faseeh'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.
46. The Committee determined cheating in an exam is a very serious form of dishonesty.
47. The Committee considered whether any mitigating or aggravating factors featured in this case.
48. The Committee accepted that there were no previous findings against Mr Faseeh. There was no evidence of any other mitigating factors in this case. The Committee had not heard from Mr Faseeh nor had it received any references or testimonials.
49. As for aggravating features, the Committee concluded that the Student demonstrated a lack of insight, remorse, or reflection. He has not demonstrated any real understanding of the seriousness of his conduct. He involved a third party into his dishonest conduct to help him gain an unfair advantage. When questioned by the proctor during the exam, he attempted to cover up his misconduct by continuing to deny any wrongdoing. The Committee determined this was a deliberate, premeditated and planned act of dishonesty. Consequently, it could not rule out the risk that he will engage in this conduct

again. The Committee also regarded Mr Faseeh's behaviour as a breach of trust. The ACCA placed a high degree of trust in the student to conduct the exam in accordance with the rules. Mr Faseeh breached that trust by his misconduct.

50. For the reasons set out above, the Committee determined cheating in an exam 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 Faseeh. Had Mr Faseeh successfully passed this exam dishonestly, he would have presented a risk to the public. Given the serious nature of the misconduct, the Committee determined Mr Faseeh's behaviour was a serious departure from relevant professional standards the Committee determined the only appropriate and proportionate sanction available is to order the removal of Mr Faseeh from the Student Register.

EFFECTIVE DATE OF ORDER

51. Considering 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.
52. In reaching its decision, the Committee took account of the fact that Mr Faseeh has failed to demonstrate any insight, remorse or reflection, there is a real risk of harm to the public. Furthermore, the Committee has no way of knowing if he will continue to hold himself out as a student member until the order takes effect.

COSTS AND REASONS

53. The Committee has been provided with a Detailed Costs Schedule.
54. The Committee concluded that ACCA was entitled to be awarded costs against Mr Faseeh. The amount of costs for which ACCA applied was nine thousand three hundred and forty-nine pounds and seventy-five pence. (£9,349.75). Considering the nature of the investigation, the Committee carefully scrutinised the schedule and determined the costs incurred were reasonable, although it

has decided to make some adjustment given the substantive hearing not occupying 2 full days.

55. The Committee gave Mr Faseeh a further opportunity to provide details of means, supported by documentary evidence. He has not taken that opportunity but has stated in his email that he has no money to pay any costs. The Committee noted that 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 was entitled to approach the matter on the basis that Mr Faseeh was in a position to pay any amount of costs it was prepared to award.

56. In all the circumstances, the Committee exercised its discretion when determining the amount Mr Faseeh should be expected to pay. Taking account of what been said by Mr Slack and the written submission of Mr Faseeh, the Committee considered that it was reasonable and proportionate to award ACCA costs in the sum of eight thousand eight hundred and ninety-nine pounds and seventy-five pence (£8,899.75).

Mr Martin Winter
Chair
06 June 2024