

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Ms Gulmira Appakova
Heard on:	Friday, 22 March 2024
Location:	Remotely by video conference
Committee:	Ms Ilana Tessler (Chair), Ms Wanda Rossiter (Accountant), Mr Geoff Baines (Lay)
Legal Adviser:	Mr Andrew Granville Stafford
Persons present and capacity:	Mr Adam Slack (ACCA Case Presenter) Ms Anna Packowska (Hearings Officer)
Summary:	Allegations 1(a), 2(a), 3(a) and (b) and 4(a) proved Removed from the student register with immediate effect. Costs of £6,000

PRELIMINARY

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Ms Gulmira Appakova. Ms Appakova is a student member of ACCA and is resident in Kazakhstan.

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2. The Committee had before it a bundle of documents (45 pages), a tabled additional bundle (5 pages) and a service bundle (31 pages).
3. Ms Appakova did not attend the hearing and was not represented.

PROCEEDING IN ABSENCE

4. The notice of hearing was sent by email to Ms Appakova on 19 February 2024. The address to which it was sent was the email address Ms Appakova had notified to ACCA as her address for email communications. It was also an address that Ms Appakova had previously used to communicate with ACCA. However, ACCA received a 'bounce-back' message from the email provider saying that the notice of hearing email could not be delivered.
5. A hard copy of the notice of hearing was sent by DHL Express on 19 February 2024. ACCA received confirmation from DHL that the documents had arrived in Kazakhstan on 21 February 2024. However, they could not be delivered without Ms Appakova providing a power of attorney to the customs authorities permitting their delivery.
6. On 21 March 2024 the Hearings Officer called Ms Appakova on the telephone number that ACCA holds for her. The call was not answered and there was no option to leave a message.
7. The Committee was satisfied that the requirements of regulations 10(1) and 22(1) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ('CDR') as to service had been complied with.
8. Having satisfied itself that service had been effected in accordance with the regulations, the Committee went on to consider whether to proceed in the absence of Ms Appakova. The Committee bore in mind that the discretion to do so must be exercised with care and in light of the public interest in dealing with matters such as this fairly, economically and expeditiously.
9. The Committee considered that no useful purpose would be served by adjourning this hearing. ACCA has attempted to contact Ms Appakova by email, post, and telephone but without any success. There has been limited engagement from her during the course of the investigation. There was no

reason to think that an adjournment would secure her attendance on a future occasion. Further, there was a clear public interest in resolving this matter expeditiously given the serious nature of the allegations.

10. The Committee therefore determined that, in the interests of justice, the hearing should proceed in Ms Appakova's absence.

Amendment

11. Mr Slack on behalf of ACCA applied to amend the allegations by changing the date in Allegation 1(a) from 'on or around 2 March 2023' to 'on or around 7 March 2023'. He submitted this was a minor amendment which did not materially change the nature of the allegation but would align it with the evidence before the Committee.
12. CDR 10(5) allows the Committee at any stage, upon the application of either party or its own motion, to amend the allegations provided that the member is not prejudiced in the conduct of their defence.
13. The Committee agreed with Mr Slack's submissions. The proposed amendment would not cause any prejudice to Ms Appakova, and it was in the interest of justice to allow the application.

ALLEGATIONS AND BRIEF BACKGROUND

14. The allegations against Ms Appakova, as amended, were as follows:
 1. Ms Gulmira Appakova, an ACCA student:
 - a) On or around 7 March 2023, submitted or caused to be submitted to an ACCA Investigations officer, an ACCA Diploma in International Financial Reporting with accompanying email asking the Investigations officer to verify them as genuine.
 2. The conduct referred to in allegation 1 was;
 - a) Dishonest in that either or both the ACCA diploma and or

accompanying email referred to in allegation 1 above were false as she knew or in the alternative

b) Such conduct demonstrates a failure to act with integrity.

3. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Ms Appakova failed to co-operate fully with the investigation of a complaint in that she failed to respond to ACCA's correspondence dated:

a) 25 October 2022 and

b) 9 March 2023.

4. By reason of any or all of the above, Ms Appakova is:

a) guilty of misconduct pursuant to Bye-law 8(a)(i), in relation to any or all of the conduct alleged at allegations 1 to 2; or in the alternative

b) liable to disciplinary action, pursuant to Bye-law 8(a)(iii) in relation to the conduct alleged at allegation 3.

15. Ms Appakova was registered as an ACCA student member on 12 March 2022.

16. On 29 March 2022 a third party sent an email to ACCA's Kazakhstan office attaching a document and seeking verification of its authenticity. The document purported to be a certificate confirming that Ms Appakova had obtained an ACCA Diploma in International Financial Reporting in January 2022. The certificate was accompanied by a letter purporting to have been sent by ACCA on 20 January 2022 as a covering letter enclosing the certificate. ACCA has subsequently confirmed that both the certificate and accompanying letter had been falsified. Ms Appakova has not taken or passed this examination.

17. ACCA emailed the person who sent the documents to ACCA for verification, asking if it was Ms Appakova who provided the document to them. However, no response was received from that person.

18. On 25 October 2022, the Investigation Department sent an email to Ms Appakova's registered email address. The email informed her that an investigation had been opened as it appeared she had submitted a falsified certificate in support of a tender application. It asked for Ms Appakova comments regarding the documents in question. No response to that email was received from Ms Appakova.
19. On 2 February 2023, ACCA sent a further email to Ms Appakova reminding her of her obligation to co-operate with the investigation and seeking her response by 16 February 2023. No response was provided by that date and a further email was sent on 28 February 2023 asking Ms Appakova to send the Investigations Officer a copy of the certificate she claims to have received from ACCA.
20. Ms Appakova emailed the investigator on 28 February 2023 and attached the same certificate and accompanying letter. Ms Appakova wrote in her email:
'Hello!
Yes, I passed the exams and received a certificate which I would like you to confirm! Thank you!'
21. On 7 March 2023, the Investigations Officer replied, confirming receipt of the diploma certificate, and informing Ms Appakova that it had been sent to ACCA's exams team for verification. Ms Appakova was also asked to respond to the questions raised in the earlier emails.
22. Ms Appakova replied the same day, saying:
'Hello!
I am sending you a reply to your letter! Please validate your diploma! Thank you!'
23. ACCA's exams team confirmed that Ms Appakova has never sat the exam shown on the diploma certificate. Accordingly, ACCA's case was that the certificate was not genuine. Ms Appakova did book an exam sitting in June 2022, but she did not attend and was marked absent.
24. On 9 March 2023, the Investigations Officer sent a further email to Ms Appakova informing her of this. The officer asked Ms Appakova to provide a response to the allegation that she had submitted this document both to ACCA

- and in support of a tender application, knowing that it was false. Ms Appakova did not reply.
25. ACCA's case was that Ms Appakova had acted dishonestly, alternatively without integrity, by submitting a false diploma certificate to ACCA.
 26. Further, ACCA alleged that by failing to reply to ACCA correspondence, Ms Appakova had breached CDR 3(1), which states:
 - a) Every relevant person is under a duty to co-operate with any investigating officer and any assessor in relation to the consideration and investigation of any complaint.
 - b) The duty to co-operate includes providing promptly such information, books, papers or records as the investigating officer or assessor may from time to time require.
 - c) A failure or partial failure to co-operate fully with the consideration or investigation of a complaint shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.

DECISIONS ON ALLEGATIONS AND REASONS

27. The Committee considered the documents before it, the submissions of Mr Slack on behalf of ACCA and the advice of the Legal Adviser. The Committee bore in mind that the burden of proving an allegation rests on ACCA and the standard to be applied is proof on the balance of probabilities.

Allegation 1(a)

28. The Committee was provided with a copy of the email that Ms Appakova sent to ACCA on 7 March 2023. On the basis of this email, the Committee was satisfied that the facts set out in Allegation 1(a), namely that Ms Appakova had submitted to the Investigations Officer an ACCA Diploma in International Financial Reporting and had asked her to verify it as genuine, were made out.
29. It therefore found Allegation 1(a) proved.

Allegation 2(a)

30. The Committee was satisfied that the diploma certificate Ms Appakova sent to ACCA on 7 March 2023 was false, as has been confirmed by ACCA's exams team. Although Ms Appakova had been entered for the exam in question in June 2022 she had not sat it and, therefore, had not obtained this qualification.
31. Clearly this must have been known to Ms Appakova. The Committee was satisfied that Ms Appakova had deliberately submitted a false certificate to ACCA and had asked for it to be verified knowing full well that she had not obtained that qualification.
32. The Committee had regard to the test for dishonesty as set out by the Supreme Court in *Ivey v Genting Casinos (UK) Ltd*. It found that both the subjective and objective elements of that test had been met.
33. The Committee was satisfied that Ms Appakova's conduct would be regarded as dishonest by ordinary and honest members of the public. The Committee therefore found Allegation 2(a) was proved.

Allegation 2(b)

34. As Allegation 2(b) was put in the alternative to Allegation 2(a), there was no need for the Committee to consider it.

Allegation 3

35. The Committee was satisfied that the emails of 25 October 2022 and 9 March 2023 had been sent to Ms Appakova at her registered email address, which was also the email address she had used to communicate with ACCA. There was no response to those emails. Therefore, she had failed to co-operate with the requests for information made by the Investigating Officer in those emails.
36. As an ACCA student, Ms Appakova is under a duty to co-operate with ACCA and with requests made by an Investigating Officer. This duty is set out in CDR 3(1). The Committee found that Ms Appakova had, by failing to respond to the requests in these emails, breached that duty.

37. Accordingly, the Committee found Allegation 3 proved in its entirety.

Allegation 4(a)

38. The Committee had found that, by submitting a false document to her regulator, Ms Appakova had acted dishonestly. Given the importance of honesty to the reputation of the profession, any dishonest conduct is clearly serious. Further, she had failed to co-operate with an investigation by her regulator into an allegation of misconduct.

39. This conduct brings discredit on Ms Appakova and would be regarded as deplorable by fellow members of the profession. It falls far short of what would be proper in the circumstances and clearly crosses the threshold for a finding of misconduct.

40. Therefore, the Committee found Allegation 4(a) proved.

Allegation 4(b)

41. As Allegation 4(b) was put in the alternative to Allegation 4(a), there was no need for the Committee to consider it.

SANCTION AND REASONS

42. The Committee considered what sanction, if any, to impose taking into account ACCA's Guidance for Disciplinary Sanctions ('GDS') and the principle of proportionality. The Committee bore in mind that the purpose of sanctions was not punitive but to protect the public, maintain confidence in the profession and declare and uphold proper standards of conduct and behaviour. Having found that Ms Appakova's actions amounted to misconduct, taking no further action was clearly not appropriate. The Committee therefore considered the available sanctions in ascending order of seriousness.

43. The Committee took into account that no previous findings had been made against Ms Appakova during her relatively short membership of the Association. That apart, the Committee found there to be no mitigating factors.

44. The Committee considered the following to be aggravating features. Ms Appakova's conduct in submitting a false certificate was deliberate and planned. Conduct such as this undermines the integrity of the exam system, and there is a clear risk of harm to the public when a student member purports to have a qualification they have not properly obtained. In respect of her non-cooperation with ACCA, the Committee noted that this had persisted over a period of time.
45. It would be inappropriate, given the nature of this misconduct, to admonish, reprimand or severely reprimand Ms Appakova. None of these sanctions would adequately protect the public.
46. The Committee concluded that Ms Appakova's actions in this case were fundamentally incompatible with being a student member of a professional association. They constituted a serious departure from relevant standards and there was a lack of any evidence of insight or remorse on Ms Appakova's behalf. The Committee did not feel that any order which allowed Ms Appakova to retain her student membership of ACCA could possibly be justified.
47. Therefore, the Committee made an order under CDR 13(4)(c) of the Disciplinary Regulations removing Ms Appakova from the student register.
48. The Committee did not consider that the public interest in this case required it to additionally make an order under CDR 13(4)(c) restricting Ms Appakova's right to apply for readmission beyond the normal minimum period.

COSTS AND REASONS

49. ACCA applied for costs against Ms Appakova in the sum of £6,870. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing.
50. The Committee found that there was no reason in principle not to make an order for costs in ACCA's favour. Nor did it consider that the application was for an unreasonable amount, save that it was appropriate to make a reduction from the estimated costs for the hearing to reflect the time the hearing had actually taken.

51. The Committee had no information about Ms Appakova's financial circumstances and therefore, in accordance with ACCA's guidance, had to proceed on the basis that she has the ability to meet any award made.
52. The Committee ordered Ms Appakova to pay ACCA's costs in the sum of £6,000.

EFFECTIVE DATE OF ORDER

53. The Committee determined that it would be in the interests of the public for the order to take immediate effect. Therefore, pursuant to Regulation 20 of the Disciplinary Regulation, the order removing Ms Appakova from student membership will take effect immediately.

Ms Ilana Tessler
Chair
22 March 2024