

HEARING
DISCIPLINARY COMMITTEE OF THE ASSOCIATION
OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Sardar Shaban Ahmad

Heard on: 09 May 2024

Location: Remotely by MS Teams

Committee: Ms Ilana Tessler (Chairman),
Mr Ryan Moore (Accountant) and
Mr Roger Woods (Lay)

Legal Adviser: Mr Alastair McFarlane

Persons present

and capacity: Mr Ben Jowett (Case presenter on behalf of ACCA)
Ms Lauren Clayton (Hearing Officer)

Outcome: Removal from the Student Register made immediate, and costs awarded to ACCA of £5,700

1. ACCA was represented by Mr Jowett. Mr Ahmad did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages 1 – 117, an additional bundle, numbered pages 1 – 2, a service bundle, numbered pages 1-19, and a copy of a video recording.

SERVICE/ PROCEEDING IN ABSENCE

2. Having considered the service bundle, and the Notice of Hearing the

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Committee was satisfied that notice of the hearing was served on Mr Ahmad in accordance with the Complaints and Disciplinary Regulations 2014 (amended 01 January 2020) (“CDR”).

3. The Committee next considered whether it was in the interests of justice to proceed in the absence of Mr Ahmad. The Committee accepted the advice of the Legal Adviser. The Committee was mindful that Mr Ahmad had a right to attend the hearing and to participate and that the discretion to proceed in his absence must be exercised with the utmost care and caution.
4. The Committee noted that ACCA’s notice was sent on 11 April 2024 to Mr Ahmad’s email address, offering him the opportunity of attending via video or telephone link, with the costs being met by ACCA. There was no response to the notice and the Hearings Officer attempted to telephone Mr Ahmad on 08 May 2024 to ascertain whether he would be attending the hearing. There was no answer and no opportunity to leave a voicemail. Further, chasing emails were sent on 11 April 2024 and 08 May 2024 and there was not response. The Committee noted there had been no engagement from Mr Ahmad at all in this case. The Committee was satisfied that all reasonable attempts have been made to secure Mr Ahmad’s attendance/participation at the hearing. The Committee was satisfied that Mr Ahmad has voluntarily waived his right to attend and was not persuaded that any adjournment would increase the chance of Mr Ahmad attending or participating further in the case. On the information before it and bearing in mind its duty to ensure the expeditious conduct of its business and the wider public interest, the Committee was satisfied that it was in the interests of justice to proceed in the absence of Mr Ahmad. The Committee reminded itself that his absence added nothing to ACCA’s case and was not indicative of guilt.

ALLEGATIONS

Mr Sardar Shaban Ahmad (‘Mr Ahmad’), ACCA Student, on 25 November 2020, in connection with a remotely invigilated FA1 Recording Financial Transactions examination (the exam):

1. **Caused or permitted one or more third parties (the third parties) to be present with him in the same room where he sat the exam**

- 2. Further to the matters referred to in allegation 1 talked to and or communicated or attempted to communicate with the third parties**
- 3. Further to the matters referred to in allegations 1 and 2 engaged in improper conduct designed to assist him in the exam attempt in that he caused or permitted the third parties to provide assistance to him during all or part of the exam.**
- 4. Mr Ahmad's conduct as referred to in allegations 1-3 above was:**
 - a. In respect of allegation 1 contrary to exam regulation 2 by reason of his failure to adhere to the exam instructions issued by ACCA as set out in the 'Information Sheet for On-Demand CBE Students sitting exams at home' that he should sit the exam in '...a well-lit room with no one else around you.'**
 - b. In respect of allegation 2 contrary to exam regulation 16**
 - c. In respect of allegation 3 contrary to exam regulation 10**
- 5. By reason of the matters referred to in allegation 3 was further**
 - a. Dishonest, in that Mr Ahmad sought to obtain an unfair advantage in the exam or in the alternative,**
 - b. Failed to act with integrity.**
- 6. Contrary to Regulation 3(1) of the Complaints & Disciplinary Regulations 2014 (as amended and as applicable in 2021), Mr Ahmad 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. 08 June 2021**
 - b. 21 June 2021**
 - c. 30 June 2021**
 - d. 15 July 2021**

- 7. By reason of his conduct Mr Ahmad is:**
- a. Guilty of misconduct pursuant to bye-law 8(a)(i); or in the alternative save for allegation 5,**
 - b. Liable to disciplinary action pursuant to bye-law 8(a)(iii)**

BACKGROUND

- 5. Mr Ahmad became an ACCA student on 25 October 2020.
- 6. On 25 November 2020, Mr Ahmad sat his on-demand FA1 Recording Financial Transactions examination (“the exam”) remotely. As part of the exams booking process, and immediately before the commencement of the exam, Mr Ahmad agreed to ACCA’s terms and conditions on sitting exams remotely. This 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.
- 7. The proctor (the remote exam invigilator) filed an Incident Report in respect of conduct observed during the exam, noting the “the test-taker frequently looking off-screen and suspicious gestures” and “The proctor warned the test-taker and asked for a camera pan, however, the behavior continues” (sic).
- 8. An investigation was commenced. Mr Ahmad has not provided any response to the correspondence sent to him during the course of the investigation. All emails were sent to Mr Ahmad at an email address he provided to ACCA. This 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.
- 9. On 08 June 2021, ACCA sent a letter to Mr Ahmad’s registered email address informing him of the complaint and seeking his response by 29 June 2021. No response was received. On 21 June 2021, ACCA sent another letter to Mr Ahmad’s registered email address asking him further questions regarding the complaint and seeking his response by 05 July 2021. ACCA extended the deadline for a response to this letter with further questions until 14 July 2021.

No response was received. On 30 June 2021, ACCA sent another letter to Mr Ahmad's registered email address reminding him of his obligation to co-operate with the investigation and seeking his response by 14 July 2021. No response was received. On 15 July 2021, ACCA sent a further letter to Mr Ahmad's registered email address reminding him again of his obligation to co-operate and again seeking his response by 22 July 2021. No response was received.

10. As part of the investigation, documents and video footage relating to Mr Ahmad's exam on 25 November 2020 have been obtained. A review of the video footage from the exam has revealed Mr Ahmad distracted by a third party before the exam started. Mr Ahmad can be seen looking to his right-hand side after a third party's voice can be heard and looking to his left-hand side shortly after when laughter from a third party can be heard.
11. ACCA contends that Mr Ahmad has breached the Examination Guidelines as prior to and during his exam he was not located in a private room with no-one else around him, contrary to Examination Regulation 2 which requires students to comply in all respects with any instructions issued by the exam supervisor/s, invigilator/s, proctor/s and any ACCA personnel before, during and at the conclusion of an exam.
12. ACCA further contends that a review of the video footage from the exam has also revealed whispering that can be heard.
13. ACCA contends that Mr Ahmad engaged in improper conduct designed to assist himself in his exam attempt by causing or permitting a third party to provide assistance in his exam and that this was, in turn, dishonest (or otherwise a breach of the Fundamental Principle of Integrity).
14. The key incidents identified from reviewing the video footage and screen recording of Mr Ahmad's exam are set out in the chronology below:
 - At 00:1:46, after it appears a third party's voice can be heard, Mr Ahmad looks up to his right-hand side.
 - At 00:2:03, after a third party can be heard laughing, Mr Ahmad can be seen looking off screen to his left-hand side.

- At 00:13:10-00:13:14, it appears a third party can be heard saying “closer”, followed by Mr Ahmad appearing to say “close”.
- At 00:14:53-00:17:06, 00:19:00-00:19:51 and 00:20:10-00:20:25, Mr Ahmad performs a camera pan of the room.
- At 00:25:15-00:27:30, after changing rooms, Mr Ahmad performs a camera pan of the room and moves his desk in front of a whiteboard.
- At 00:32:17, Mr Ahmad shows the proctor his desk. As per the chat logs, at 3.07am, the proctor requested Mr Ahmad to show the desk on his chair.
- Between 35:00 and 37:00, appears to be when the exam is launched.
- At 52:23-52:25, it appears a third party whispers “350”. After this is whispered, Mr Ahmad selects “\$350” as the answer to the question on screen (Question 15).
- At 52:38-52:44, whilst Mr Ahmad is covering his mouth with his hand, it appears voices from other persons can be heard.
- At 53:20-53:22, it appears a third party can be heard whispering.
- At 54:13, it appears a third party whispers “phela option” (first option in Urdu) After this is whispered, Mr Ahmad selects the first option as the answer to the question on screen (Question 19).
- At 54:48, it appears a third party whispers “1, 3, 4”. Mr Ahmad selected the “1, 3 and 4” option as the answer to the question on screen (Question 20) which was on or about the same time when it appears the “1, 3, 4” can be heard.
- At 59:35-1:04:35, Mr Ahmad performs a camera pan of the room.

- Between 1:24:30 and 1:26:30, appears to be when the exam was terminated. As per the chat logs, at 4.02am, the proctor wrote in the chatbox “We will not be continuing with the session today due to an academic integrity incident. I will be disconnecting the session at this time. Please contact ACCA for further information.”.
- At 1:36:03-1:36:15, after Mr Ahmad’s exam was terminated several minutes earlier, two other people can be seen on screen.

ACCA’s SUBMISSIONS

Allegations 1 to 4

15. ACCA contended that on the basis of the documentation including the video footage Mr Ahmad permitted a third-party to be in the same room where he sat the exam and communicated with the third-party and that this was improper conduct designed to assist him in the exam attempt as the third party clearly provided assistance to him during the exam.
16. In respect of Allegation 1, ACCA submitted this was contrary to Exam Regulation 2, in that Mr Ahmad had not adhered to the instructions on ACCA’s Information Sheet to the effect that he should sit the exam with no one else around him. In respect of Allegation 2 communicating with a third party was in breach of Exam Regulation 16, and in respect of Allegation 3 engaging improper conduct was in breach of Exam Regulation 10.

Allegation 5 – Dishonesty/Integrity

17. ACCA further submitted that Mr Ahmad’s conduct was dishonest because Mr Ahmad 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. In effect, ACCA contended Mr Ahmad was cheating. It alleged the alternative of the lack of integrity, if the Committee did not find dishonesty.

Allegation 6 - Failure to Cooperate

18. ACCA submitted that Mr Ahmad's failure to reply to ACCA's correspondence which required responses is evidence of a failure to co-operate.
19. ACCA contended that by not engaging and cooperating with the investigation, ACCA were not completely able to understand the circumstances of the incident and investigate the allegations fully and thus frustrated its ability to discharge its regulatory function.

Allegation 7 – Misconduct/Liability to Disciplinary Action

20. ACCA contended that both the cheating in the exam and the failing to cooperate were serious failings and amounted to misconduct. It alleged the alternative of liability to disciplinary action if the Committee did not find misconduct in relation to all allegations save Allegation 5.

MR AHMAD'S SUBMISSIONS

21. Mr Ahmad has made no response to the allegations.

DECISION ON ALLEGATIONS AND REASONS

22. The Committee accepted the advice of the Legal Adviser.
23. The Committee heard that there had been no previous findings against Mr Ahmad and, whilst noting he has made no responses, accepted that it was relevant to put his good character in relation to the likelihood of him acting as ACCA alleged, into the balance in his favour.

DECISION ON FACTS

24. The Committee carefully considered all the documentary evidence it had received, as well as the submissions of Mr Jowett on behalf of ACCA. It reminded itself to exercise caution in relation to its reliance on documents. The Committee reminded itself that the burden of proving the case was on ACCA and had regard to the observation of Collins J in Lawrance v General Medical Council on the need for cogent evidence to reach the civil standard of proof in cases of dishonesty. The standard of proof to be applied

throughout was the ordinary civil standard of proof, namely the 'balance of probabilities'.

Allegation 1

Caused or permitted one or more third parties (the third parties) to be present with him in the same room where he sat the exam

25. The Committee carefully noted and listened to the video recording of the exam. It heard whispers, saw shadows and saw Mr Ahmad covering his mouth which it accepted was him covering talking to a third party. The Committee was satisfied therefore on the balance of probabilities that there was a third party in the room with Mr Ahmad during the exam and that Mr Ahmad caused or permitted this to be the case. Accordingly, the Committee was satisfied that Allegation 1 was proved.

Allegation 2

Further to the matters referred to in allegation 1 talked to and or communicated or attempted to communicate with the third parties

26. The Committee was satisfied on the video footage that it could hear Mr Ahmad communicating with the third-party. Accordingly, the Committee was satisfied that Allegation 2 was proved.

Allegation 3

Further to the matters referred to in allegations 1 and 2 engaged in improper conduct designed to assist him in the exam attempt in that he caused or permitted the third parties to provide assistance to him during all or part of the exam.

27. The Committee was satisfied that the proved conduct in Allegations 1 and 2 amounted to improper conduct designed to assist Mr Ahmad in his exam attempt as he caused or permitted the third-party to provide him assistance. The Committee accepted that there was whispering from a third party which included answers to questions in the exam, which Mr Ahmad then entered

as his answers. There was convincing evidence that a Third Party was whispering answers that were then entered by Mr Ahmad in to his exam answers. Accordingly, the Committee was satisfied that Allegation 3 was proved.

Allegation 4

- 4. Mr Ahmad's conduct as referred to in allegations 1-3 above was:**
 - a. In respect of allegation 1 contrary to exam regulation 2 by reason of his failure to adhere to the exam instructions issued by ACCA as set out in the 'Information Sheet for On-Demand CBE Students sitting exams at home' that he should sit the exam in '...a well-lit room with no one else around you.'**
 - b. In respect of allegation 2 contrary to exam regulation 16**
 - c. In respect of allegation 3 contrary to exam regulation 10**

28. The Committee was satisfied that permitting a third-party to be in the room during the exam amounted to a breach of Exam Regulation 2 which requires examinees to comply with all ACCA instructions. Further, the Committee was satisfied that communicating with the third-party what is a breach of Exam Regulation 16 which prohibits the examinee communicating with people other than the Proctor. Further, the Committee was satisfied that communicating with the third-party to get assistance in the exam was improper conduct to seek to gain assistance during the exam and breached Exam Regulation 10. Accordingly, the Committee was satisfied that Allegations 4 a, b, and c were all proved.

Allegation 5

- 5. By reason of the matters referred to in allegation 3 was further**
 - a. Dishonest, in that Mr Ahmad sought to obtain an unfair advantage in the exam or in the alternative,**

b. Failed to act with integrity.

29. The Committee first asked itself whether Mr Ahmad's conduct was dishonest in that he had sought to obtain an unfair advantage in the exam by obtaining assistance from a third-party. The Committee asked itself what Mr Ahmad's belief was as to the facts. The Committee was satisfied, given its findings of fact, that Mr Ahmad intended to use assistance from a third-party to gain an unfair advantage - in other words, to cheat. The Committee was satisfied that he was aware of the prohibition of third parties being in the room as he had been informed of the Exam Regulations. It found that Mr Ahmad's permitting a third party to be in the room, and the communication between Mr Ahmad and the third party, was a deliberate, planned act with the intention of gaining an unfair advantage in the exam. The Committee was satisfied that his attempts to cover his mouth indicated that he knew he should not be communicating with a third party. It was satisfied that he had intended to use the assistance of the third party in the room to cheat in the exam and gain an advantage over other examinees. It had no hesitation in determining that Mr Ahmad's belief at the time was dishonest according to the standards of ordinary decent people. Accordingly, it was satisfied that Allegation 5 (a) was proved and did not consider the alternative of Allegation 5 (b).

Allegation 6

Contrary to Regulation 3(1) of the Complaints & Disciplinary Regulations 2014 (as amended and as applicable in 2021), Mr Ahmad 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. 08 June 2021**
 - b. 21 June 2021**
 - c. 30 June 2021**
 - d. 15 July 2021**
30. In relation to Allegation 6, the Committee was satisfied that under paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, there was an obligation on Mr Ahmad to co-operate fully with ACCA in the investigation of any complaint. It was satisfied that Mr Ahmad made no response to ACCA's

correspondence requesting his co-operation on the 08 June 2021 21 June 2021, 30 June 2021 and 15 July 2021. There was no evidence before the Committee in this case to amount to a defence to the obligation on professionals to co-operate with their regulator as expressed in Regulation 3(1). It was therefore satisfied that these non-responses amounted to failures as Mr Ahmad had a duty to respond. Therefore, he breached the obligation under the Regulations and Allegation 6 was proved.

Allegation 7

By reason of his conduct Mr Ahmad is:

- a. Guilty of misconduct pursuant to bye-law 8(a)(i); or in the alternative save for allegation 5,**
- b. Liable to disciplinary action pursuant to bye-law 8(a)(iii)**

31. The Committee next asked itself whether the proven conduct amounted to misconduct.
32. The Committee had regard to the definition of misconduct in Bye-law 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Mr Ahmad's actions brought discredit on him, the Association and the accountancy profession. It was satisfied that cheating in a professional exam was deplorable conduct and reached the threshold of seriousness for misconduct. Being honest and trustworthy is a fundamental tenet of the accountancy profession. His conduct therefore had the potential to undermine the integrity of ACCA's examination system and public confidence in those taking the examinations and thus the profession.
33. Further, the Committee was satisfied that failing to co-operate with a professional regulator was serious and amounted to misconduct. It was an essential obligation of every professional to cooperate with its regulator to enable the regulator to properly investigate allegations brought before it and so that public confidence in the regulatory system can be maintained.

34. In the light of its judgment on misconduct, no finding was needed upon liability to disciplinary action.

SANCTIONS AND REASONS

35. The Committee noted its powers on sanction were those set out in Regulation 13(4). It had regard to ACCA's Guidance for Disciplinary Sanctions and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate. It accepted the advice of the Legal Adviser.
36. The Committee considered that the conduct in this case was very serious. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. Being honest is a fundamental requirement of any accountant. Similarly, not co-operating with your regulator was a very serious failing.
37. The Committee identified only one mitigating factor:
- Mr Ahmad was of previous good character with no previous disciplinary record
38. The Committee identified the following aggravating factors:
- No evidence of insight or remorse
 - This was pre-planned, deliberate misconduct involving dishonesty, breaching the trust placed in examinees undertaking professional exams remotely
 - Potential damage to the examination system
 - Potential to undermine the reputation of the profession.
39. Given the Committee's view of the seriousness of Mr Ahmad's conduct, it was satisfied that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to highlight to the profession and the public the gravity of the proven misconduct. In considering a Severe Reprimand, the Committee noted that a majority of the factors listed in the guidance were not present and, in particular, there was no evidence of

insight or remorse. The Committee had regard to Section E2 of the Guidance on Dishonesty and the seriousness of such a finding on a professional. It considered the factors listed at C5 of the Guidance for removal of Mr Ahmad and was satisfied that his conduct was fundamentally incompatible with remaining on the register. The Committee was satisfied that only removal from the register was sufficient to mark the seriousness to the profession and the public.

COSTS AND REASONS

40. ACCA claimed costs of £6,397.25 and provided a detailed schedule of costs. It noted Mr Ahmad has not provided a formal statement of means and had no information from him. It had regard to ACCA's Guidance for Costs Orders. The Committee decided that it was appropriate to award costs in this case and the costs claimed were reasonable incurred. The Committee agreed to make some reduction for the case taking less time than estimated. The Committee concluded that the sum of £5,700 was appropriate and proportionate. Accordingly, it ordered that Mr Ahmad pay ACCA's costs in the amount of £5,700.

EFFECTIVE DATE OF ORDER

41. The Committee was persuaded that the ground for imposing an immediate order was made out given the serious facts of this case and that there is a risk of Mr Ahmad holding himself out as an ACCA student if an immediate order is not imposed.

Ms Ilana Tessler
Chair
09 May 2024