

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Muhammed Arsalan
Heard on:	Tuesday, 28 May 2024
Location:	Held remotely by Microsoft Teams
Committee:	Mr Andrew Gell (Chair) Mr Abdul Samad (Accountant) Mr Roger Woods (Lay)
Legal Adviser:	Ms Giovanna Palmiero (Legal Adviser)
Persons present and Capacity:	Mr Adam Slack (ACCA Case Presenter) Miss Mary Okunowo (Hearings Officer) Mrs Zarqa Shaikh (Interpreter)
Summary	Admonishment.
Costs:	£250.00

INTRODUCTION

1. The Disciplinary Committee (“the Committee”) convened to hear allegations of misconduct against Mr Muhammad Arsalan (“Mr Arsalan”).

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2. Mr Adam Slack (“Mr Slack”) presented the case on behalf of ACCA.
3. Mr Arsalan did attend and was not represented. An Interpreter, Mrs Shaikh, was present to assist Mr Arsalan.
4. The Committee had confirmed that it was not aware of any conflicts of interest in relation to the case.
5. In accordance with Regulation 11(1)(a) of the Chartered Certificate Accountants Complaints and Disciplinary Regulations 2014 (the Regulations), the hearing was conducted in public.
6. The hearing was conducted remotely via Microsoft Teams.
7. The Committee was provided with, and considered in advance the following documents:
 - (i) A main hearing bundle with pages numbered 1-131;
 - (ii) A Memorandum & Agenda 1-2;
 - (iii) Service bundle numbered 1-23;
 - (iv) Examination video SJW 2hr 18min 4 seconds;
 - (v) Tabled additional bundle 2 pages;
 - (vi) At the sanction stage the Committee was provided with a cost schedule.

ALLEGATIONS

8. Schedule of Allegations

Mr Muhammad Arsalan ('Mr Arsalan'), a student member of the Association of Chartered Certified Accountants ('ACCA'):

1. On 14 December 2020, failed to comply with instructions issued by ACCA personnel (as per the Student Information Sheet) in connection with a FA1 Recording Financial transactions exam, in that he caused or permitted a third party to be in the same room as him when he was sitting

the exam, and accordingly failed to ensure in accordance with that instruction that no one else was around him in the room where he sat his exam, contrary to Examination Regulation 2.

2. Caused or permitted the third party referred to in Allegation 1 to be in possession of and/or use a mobile phone in the Exam room during the Exam.
3. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014 (as applicable in 2021), failed to co-operate fully with the investigation of a complaint, in that he did not respond to ACCA's correspondence dated:
 - a. 13 September 2021
 - b. 28 September 2021
 - c. 06 October 2021
4. By reason of his conduct, Mr Arsalan is:
 - a. Guilty of misconduct pursuant to bye-law 8(a)(i); or, in the alternative,
 - b. Liable to disciplinary action pursuant to bye-law 8(a)(iii) in respect of allegations 1 & 3 only.

BRIEF BACKGROUND

9. On 24 November 2020, ACCA registered Mr Arsalan as a student. His student number being [REDACTED]. As such, he is bound by the Association's Bye-laws and Regulations 4.
10. On 14 December 2020, Mr Arsalan sat his FA1 Recording Financial Transactions examination (the 'Exam') remotely. This exam was a computer-based exam, which the student takes at their own premises and using their own

computer. This Exam is remotely invigilated by a Proctor, who had access to the webcam and microphone of Mr Arsalan and remotely recorded the exam.

11. Mr Arsalan had been sent prior to the exam the “Information Sheet for On-Demand CBE students sitting exams at home” (the ‘Information Sheet’) which contains the Examination Regulations and Guidelines and the instruction that students must be “located in a private, well-lit room with no one else around you”.
12. On the day of the exam, prior to it being launched, Mr Arsalan was provided via the chat box the Information Sheet for On-Demand CBE Students sitting exams at home and asked to agree to the rules, to which he did so in the chat box by typing “agree”.
13. The Proctor filed an Incident Report in respect of Mr Arsalan’s Exam, noting they “observed the test taker utilizing their mobile phone during the exam.”
14. The video footage relating to Mr Arsalan’s exam on 14 December 2020, revealed the presence of another person in the room during the exam, who was holding a mobile phone above Mr Arsalan’s laptop.
15. As part of the investigation, documents and video footage relating to Mr Arsalan’s exam on 14 December 2020 have been obtained. A review of the video footage from the exam has revealed the presence of another person in the room during the exam who was holding a mobile phone above Mr Arsalan’s laptop. The mobile phone has a camera lens pointing towards the screen, potentially taking photographs of the examination content.

Key Timestamps During the Exam Footage:

- At 01:40:30 in the recording of the exam, a third-party hand can be seen above Mr Arsalan’s screen holding a mobile phone with the camera lens facing the computer screen.

- At 1:41:49 in the recording of the exam a third-party hand can be seen above Mr Arsalan's screen holding a mobile phone with the camera lens facing the computer screen.
 - At 1:44:57 in the recording of the exam, a third-party hand can be seen above Mr Arsalan's screen holding a mobile phone with the camera lens facing the computer screen.
 - At 1:46:49 in the recording of the exam, a third-party hand can be seen above Mr Arsalan's screen holding a mobile phone with the camera lens facing the computer screen.
16. In his email response to the ACCA of the 13 April 2021, Mr Arsalan admits the following: *"during the exam the incident was happened ,using of mobile phone by third party I am extremely sorry and I feel guilty but that was'nt me that was my mother actually i am the first child in my family who doing ACCA and give online exam,my father is a construction worker [REDACTED] and my mother was excited on that moment because they both are un educated and my father wants to see me on video call my mother show me to him on call (sic.)"*.
 17. On 13 September 2021, ACCA sent an email attaching a letter to Mr Arsalan's registered email address informing him of the complaint and seeking his response by 27 September 2021. No response was received.
 18. On 28 September 2021, ACCA sent another email attaching letter to Mr Arsalan's registered email address reminding him of his obligation to co-operate with the investigation and seeking his response by 05 October 2021. No response was received.
 19. On 06 October 2021, ACCA sent a final letter to Mr Arsalan's registered email address reminding him again of his obligation to co-operate and seeking his response by 13 October 2021. A copy of the letter dated 28 September 2021 was also attached. No response was received.
 20. On 23 December 2021 an email was sent from ACCA to Mr Arsalan, allowing him access to the video footage of the exam.

RESPONSE TO ALLEGATIONS

21. Mr Arsalan formally admitted Allegation 1, 2, and 3.
22. ACCA and Committee confirmed that Allegation 4 is for the judgement of the Committee.

ACCA SUBMISSIONS

23. Mr Slack on behalf of ACCA, gave a brief outline of the facts and referred to the documentary evidence and exam recording relied upon by ACCA. Mr Slack submitted that the primary allegations 1, 2, 3 and 4 were all capable of being found proved.
24. Mr Slack submitted that prior to the exam being launched. Mr Arsalan had access to the “Information Sheet for On-Demand CBE students sitting exams at home” (the ‘Information Sheet’) via a link at the time of registering for the Exam, which contains the Examination Regulations and Guidelines and the instruction that students must be “located in a private, well-lit room with no one else around you”.
25. Mr Slack confirmed that in the exam recording, a mobile phone was seen on four separate occasions shown over the top of Mr Arsalan’s computer.
26. In relation to allegation 3 despite initially responding to the ACCA, Mr Arsalan did not provide further detailed explanation to the questions asked.
27. Mr Slack invited the Committee to consider that, Mr Arsalan’s conduct amounted to misconduct or in the alternative, the Committee was invited to find that the conduct renders Mr Arsalan liable to disciplinary action as it amounts to breaches of bye-law 8(a) and regulation 3(1) of the Regulations.

DECISION ON ALLEGATION 4 AND REASONS

28. There were formal admissions to Allegations 1, 2 and 3 by Mr Arsalan.
29. The Committee found that these Allegations were found proved.
30. Mr Arsalan addressed the Committee. He stated that because of the incident, he could not progress further with the rest of his examinations. However, he did pass the exam in question, even though the portal showed that he had failed. He went to the ACCA office in Karachi and explained why the exam was removed from the portal and that there was an investigation ongoing. Mr Arsalan undertook a further exam on the 17 August 2021 at an exam centre, and this was passed.
31. Mr Arsalan was asked by the Committee why he did not engage with the ACCA investigation and why he failed to respond to questions surrounding the allegation, after his initial correspondence. Mr Arsalan stated that he received a lot of emails from the ACCA and maybe he had missed those emails. He also stated that in 2021 he had [PRIVATE] for some time, which could have caused the lack of response.
32. He was further asked to clarify, if the email address he provided to the ACCA was his or his mother's, and he confirmed that it was his own address.
33. The Committee asked if he understood the rules for sitting the remote online exam, and that when the exam was being undertaken, no one else was allowed to be in the room. Mr Arsalan stated that he was aware of this rule. He confirmed that he had told his family not to enter the room prior to the exam, but whilst the exam was being undertaken his mother entered the room. He stated that when his mother (Mrs Arsalan) entered the room, he had gestured with his hand, indicating to her that she was not allowed to be there, and that this hand movement was noticeable on the recording.
34. Mr Arsalan explained that he had previously explained to ACCA, in correspondence, why his mother was there and why she was taking the pictures and confirmed that she is "not educated" and spoke only Urdu. He had

provided his mother's contact details to ACCA so that they could confirm this directly with his mother, however ACCA did not contact her.

35. Mr Arsalan's mother was present at the hearing, and she wished to address the Committee, in support of her son, which was allowed by the Committee.
36. Mrs Arsalan stated that she wanted to apologise for her actions. She confirmed that Mr Arsalan is the eldest son and grandson, and his family were proud and happy that he was undertaking professional exams. She stated that Mr Arsalan had told her not to enter the room whilst undertaking the exam and not to take the photographs. She stated that she did not understand the consequences of her taking the pictures and wanted to send them to her husband, who worked abroad. She did not realise the seriousness of the consequences of her action, the impact of her actions on her son, and she apologised to everyone. Mr Arsalan's family members are all very proud of his studies and that no other family member is educated to his level. Mrs Arsalan was grateful for being allowed to address the Committee.
37. Mrs Arsalan was asked by the Committee as to how she took the pictures. She confirmed that she brought the phone into the room with her and used the phone to take the images. She was further asked if she had taken any other pictures from different angles in the room, which she did not. She stated that she was not aware that she would be seen whilst taking the pictures on the laptop. It was pointed out to Mrs Arsalan that the phone looked like it was taking a picture of the screen of Mr Arsalan's computer. She confirmed that she wasn't aware of what she was taking a picture of, and just wanted to take an image to send to her husband.
38. The Committee commented that on four occasions during a six minute period of the recording, the images showed hands holding the phone and they asked Mrs Arsalan to explain why it had taken so long to take a photograph. Mrs Arsalan confirmed that she was unaware as to whether she had been successful in taking the picture or not and wanted to be sure. She was asked if she intended to share the photo of the screen of the laptop computer but stated that she was not aware of which angle she had taken the picture.

39. The Committee bore in mind that the decision in relation to Allegation 4 was one for themselves and that they had to consider the issue of misconduct.
40. The Committee reminded itself of the case of *Roylance v General Medical Council* [2001] 1 AC 311, in which it was decided that 'the meaning of [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.
41. Mr Arsalan accepts that his mother was present in the room and this was clearly a breach of Exam Regulation 2. Mr Arsalan states that he told his family not to enter the room whilst he was undertaking his exam. Mr Arsalan was also aware that his mother was taking photographs of him, again in the knowledge that the use of a phone was not allowed.
42. Mr Arsalan was aware of the breaches of the exam regulations and permitted a third party to be in the exam room and use a mobile phone's camera.
43. ACCA has a duty to ensure the security and integrity of its exam content, and submits that by failing to address these incidents, Mr Arsalan has acted improperly.
44. ACCA submitted this behaviour is a risk that the third party would photograph the exam questions and supply these to other ACCA students taking the same exam or Mr Arsalan could be provided with them by the third party, if he failed the exam, to use as a revision aid when he came to re-sit the exam.
45. The Committee were of the opinion, after hearing from Mrs Arsalan, that this was not the situation as submitted by ACCA. This was an overzealous mother, full of family pride who wished to show the rest of her family her son's engagement in professional examinations.

46. Mr Arsalan submitted that he gave his mother an indication that she should not be present and that this was visible on the recording. Whilst the Committee did not see this physical indication given by Mr Arsalan on the recording, it considered that Mr Arsalan's attention was otherwise engaged in completing his exam and that he could be forgiven for not being more proactive.
47. In light of this, the Committee asked itself, how in the circumstances Mr Arsalan should have acted differently when confronted with his mother in the room, in the knowledge that she should not be present. For example, he could have explained to the Proctor that his mother had entered the room to make her aware. Consideration was also given to different cultural values and that in some cultures it may be more difficult to tell off an elder but conceded that this was not raised by Mr Arsalan in his submissions.
48. An infringement of exam rules must be treated as serious. The online remote exam process depends on the trust and integrity of the students and that the rules are there to stop cheating or others from gaining an unfair advantage. The Committee considered that this infringement was innocent and not for personal advantage.
49. Whilst the Committee found that Mr Arsalan should have been more proactive in his response to his mother when she entered the room and started to take photographs of him, the question the Committee need to ask itself was whether this was negligent, or serious enough to amount to misconduct.
50. Mr Arsalan knew the rules and allowed them to be breached, by his omissions in allowing his mother to enter the room and take photographs. The Committee found that a breach of an exam regulation did not automatically lead to a finding of misconduct which was in the category of serious misconduct.
51. The Committee noted that this was Mr Arsalan's first exam and that whilst he may have known the rules, he was ignorant of the significance of not following them. There was no evidence of Mr Arsalan trying to gain an advantage from allowing the situation.

52. Mr Arsalan had admitted his behaviour and initially gave the explanation to the ACCA which was provided during the hearing.
53. Mr Arsalan made admissions that he did not cooperate, with the ACCA investigation in that he did not give formal responses to questions raised in letters dated 13 September 2021, 28 September 2021, and 06 October 2021. Whilst he did initially communicate and continued to do so, he never formally responded to the specific requests for information. The Committee found that the duty to cooperate is not a selective act, and the duty prevails to uphold the integrity of the examination.
54. Every ACCA student has an obligation to co-operate fully with their professional body, and to engage with it when any complaints were raised against the individual. Such co-operation is fundamental to a regulator being able to discharge its obligations of ensuring protection of the public and upholding the reputation of the profession.
55. Mr Arsalan accepted that he did not fully cooperate with ACCA's investigation. He stated that he had received a lot of emails from the ACCA and further explained that he had an accident in 2021, which had left him bedbound. This may have led to the fact that he did not fully cooperate with the investigation. Whilst this explanation did not negate his obligation to cooperate, it was a mitigating fact.
56. In light of the above the Committee concluded that Mr Arsalan's actions were not capable of being described as serious misconduct. However, the Committee did find that Mr Arsalan was liable to disciplinary action due to the breaches of the examination rules and failure to cooperate with the investigation process. The Committee accepted that Complaints & Disciplinary Regulation 3(1) and/or Examination Regulation 2 had been breached by virtue of the facts and submissions stated above, so bye-law 8(a)(iii) is automatically engaged in respect of allegations 1 and 3.
57. Therefore, the Committee found that Mr Arsalan's behaviour did not amount to serious misconduct and that, accordingly, Allegation 4(a) was not found proved.

58. However, the Committee did find Allegation 4(b) proved, which was in the alternative, to Allegation 4(a).

SANCTION AND REASONS

59. In reaching its decision on sanction, the Committee considered the submissions made by Mr Slack on behalf of ACCA. Mr Slack made no submission on sanction but referred to the Guidance on Sanction and in particular the summary of the general principles.

60. The Committee accepted the advice of the Legal Adviser who referred it to ACCA's Guidance for Disciplinary Sanctions. In considering what sanction, if any, to impose, the Committee bore in mind the principle of proportionality and the need to balance the public interest against Mr Arsalan own interests.

61. The Committee referred to the Guidance for Disciplinary Sanctions issued by ACCA and had in mind the fact that the purpose of sanctions was not to punish Mr Arsalan but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct, and that any sanction must be proportionate.

62. When considering the appropriate sanction, the Committee considered the aggravating and mitigating features of the case.

63. The Committee considered the misconduct involved the following aggravating features:

- Undermining the integrity, and thereby undermining public confidence in ACCA's membership process;

64. The Committee considered the misconduct involving the following mitigating features:

- The absence of any previous disciplinary history with ACCA.

- Evidence of insight.
 - Admissions made to the allegations made at an early point.
 - Expressions of apology were made to the ACCA and to the Committee.
65. The Committee did not think it appropriate, or in the public interest, to take no further action in a case where a student member had disregarded the Exam Regulations. Whilst the misconduct was at the lower end of the spectrum, there is clearly potential for harm and for confidence in the exam system to be diminished when student members act in a way that does not abide by the rules. Mr Arsalan should have acted in a proactive manner. Mr Arsalan also failed to cooperate with his regulator in the investigation process, which is fundamental to upholding the integrity of professional standards. There is adverse effect on the public confidence if no action is taken.
66. In respect of an Admonishment the Committee considered that there has been an early admission to the allegations. Mr Arsalan has shown insight into his failings and expressed genuine remorse and apology. There was no indication that there would be any repetition of this incident and no suggestion of profiting from the incident, however he did engage in a limited manner with the investigation. The Committee concluded that there had been no loss or adverse effect to the public.
67. Taking into account the guidance in the GDS, the Committee decided that an admonishment would adequately mark the seriousness of the misconduct. The conduct in this case was not a deliberate breach of the exam regulations and the risk of repetition was low.
68. The Committee went on to then considered whether to reprimand was the correct sanction. The guidance indicates that a reprimand would be appropriate in cases which were minor in nature, with no risk of repetition, and evidence of understanding and insight. The Committee felt that in the circumstance of this particular incident, the facts did not warrant such a sanction. Mr Arsalan was aware of the examination rules, and the conduct was not a deliberate action by himself. Whilst he did fail to cooperate with the investigation, he did initially give

an account and due to an accident was bedbound for the one and a half months when he was requested to submit his responses proceedings.

69. The Committee took into account the overarching principles and felt that an Admonishment would in all the circumstances uphold these principles. The misconduct was of a minor nature, there appears to be no continuing risk to the public, and there has been sufficient evidence of an individual's understanding, together with genuine insight into the conduct found proved.

COSTS AND REASONS

70. ACCA submitted a schedule of costs and applied for costs against Mr Arsalan the sum of £6,115.25. Mr Slack confirmed that there was an overestimate of the time required for the hearing and the costs applied for required adjustment.
71. The student has submitted documents relating to their financial position, which the Committee has considered.
72. The financial details considered were as follows: [PRIVATE]. Having carefully considered the evidence provided by Mr Arsalan, ACCA's Cost Guidance, and heard from the Legal Adviser, the Committee made the following decision as to costs/fines. The Committee was satisfied that ACCA was entitled to claim its costs. It had regard to the important principle that in disciplinary proceedings the majority of 'members' should not subsidise the minority who find themselves within the disciplinary process. Nevertheless, in this case, the Committee considered that it was appropriate to order that Mr Arsalan should pay some amount towards the costs in the amount of £250.
73. The Committee have not received any documentary evidence as to the Mr Arsalan's financial circumstances, and having considered ACCA's guidance as to costs, accordingly, has inferred that Mr Arsalan is able to meet the costs as assessed by the Committee.
74. The Committee therefore ordered Mr Arsalan to pay ACCA's costs in the sum of £250.

Mr Andrew Gell
Chair
28 May 2024