

## HEARING

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

#### REASONS FOR DECISION

<b>In the matter of:</b>	<b>Ms Mwangala Keturah Imenda</b>
<b>Heard on:</b>	<b>Wednesday, 06 November 2024</b>
<b>Location:</b>	<b>Remotely by Microsoft Teams</b>
<b>Committee:</b>	<b>Ms Ilana Tessler (Chair) Ms Jo Royden-Turner (Accountant) Mr Damian Kearney (Lay)</b>
<b>Legal Adviser:</b>	<b>Ms Helen Gower (Legal Adviser)</b>
<b>Persons present and capacity:</b>	<b>Ms Michelle Terry (ACCA Case Presenter) Ms Anna Packowska (Hearings Officer)</b>
<b>Summary</b>	<b>Allegations 1, 2(a), 2(b), 3(a) proved Misconduct found proved Removal from student register of ACCA</b>
<b>Costs:</b>	<b>£6,345.50</b>

#### ACCA



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## **SERVICE OF PAPERS**

1. The Disciplinary Committee (“the Committee”) convened to consider an Allegation against Ms Imenda. Ms Imenda did not participate in the hearing, and she was not represented.
2. The Committee had before it the following papers: DC Report and Bundle (numbering 1-55 pages), an Additional Bundle (numbering 1-9 pages), a Service bundle (numbering 1-16 pages), and a two-page Memorandum and Agenda.
3. The Committee considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (“CDR”). The Committee took into account the submissions made by Ms Terry and also took into account the advice of the Legal Adviser.
4. Included within the Service bundle was the Notice of Hearing dated 09 October 2024, thereby satisfying the 28-day notice requirement, which had been sent to Ms Imenda’s email address as it appears in the ACCA Register. The Notice included the time, date, and remote venue for the hearing and also Ms Imenda’s right to attend the hearing and to be represented, if she so wished. In addition, the Notice provided details about applying for an adjournment and the Committee’s power to proceed in Ms Imenda’s absence, if considered appropriate. There was a receipt confirming the email had been delivered to Ms Imenda’s registered email address.
5. The Committee was satisfied that Notice of the hearing had been served in accordance with the Regulations, which require ACCA to prove that the documents were sent, not that they were received.

## **PROCEEDING IN ABSENCE**

6. The Committee heard submissions from Ms Terry inviting the Committee to proceed in Ms Imenda’s absence. She referred the Committee to the documents in the service bundle which included a follow up e-mail to Ms

Imenda dated 4 November 2024, a telephone attendance note dated 5 November 2024 of an attempt to telephone Ms Imelda on the telephone number held by ACCA, and a further e-mail dated 5 November 2024 attaching the telephone attendance note and requesting that Ms Imelda advise whether she will be attending the hearing. There has been no response from Ms Imelda to the Notice of Hearing or this correspondence.

7. The Hearings Officer sent a further e-mail to Ms Imenda on 5 November 2024 with the links to enable her to join the hearing.
8. The Committee accepted the advice of the Legal Adviser. It bore in mind that although it had a discretion to proceed in the absence of Ms Imenda, it should exercise that discretion with the utmost care and caution.
9. The Committee was of the view that Ms Imenda faced serious allegations and that there was a clear public interest in the matter being dealt with expeditiously. The Committee considered an adjournment would serve no useful purpose because it was unlikely that Ms Imenda would attend on any other occasion, and she had not applied for an adjournment.
10. The Committee noted that Ms Imenda had provided an e-mail response to ACCA within the investigation which was sent from the e-mail address held by ACCA. The Committee concluded that Ms Imenda was or should be aware of the hearing and that she had voluntarily absented herself. In all the circumstances, the Committee decided that it was in the interests of justice and in the public interest that the matter should proceed. No inference would be drawn from Ms Imenda's non-attendance.

#### **AMENDMENT OF ACCA'S REPORT**

11. Ms Terry invited the Committee to agree to amend an error in ACCA's report. The report referred to Regulation 10 of the Exam Regulations (2023), but the word "irregular" was missing. The report should refer to the correct wording as follows:

*“You may not engage in any irregular conduct designed to assist you in your exam attempt or provide any improper assistance to any other exam entrant in their exam attempt”*

12. Ms Terry submitted that this was a typographical error and that the proposed amendment did not prejudice Ms Imenda.
13. The Committee accepted the advice of the Legal Adviser. The proposed amendment was not to the Allegation, but to the material relied on by ACCA in support of the Allegation. The Legal Adviser confirmed that the Committee had the discretion to make amendments to the Allegation and that this also extended to the supporting material relied on by ACCA. The Committee should consider whether the proposed amendment created any unfairness for Ms Imenda.
14. The Committee decided that it was fair and appropriate to make the amendment proposed by Ms Terry. The proposed amendment was not to the Allegation, and it was appropriate to make the amendment to correct a typographical error. Although Ms Imenda did not have advance notice of the amendment the Committee was satisfied that it did not create any unfairness for her. The Committee therefore agreed to the proposed amendment.

## **ALLEGATIONS**

The Committee convened to consider the following allegations:

1. On or around 24 April 2023, Ms Mwangala Keturah Imenda an ACCA student asked person A to sit an ACCA exam on her behalf in return for payment.
2. Ms Imenda’s conduct in respect of the matters described in Allegation 1:
  - a) was contrary to exam Regulation 10;

- b) dishonest in that Ms Imenda in that she was seeking to obtain assistance in her exam attempt in order to gain an unfair advantage by reason of the matters referred to in allegation 1; in the alternative;
  - c) demonstrates a failure to act with integrity.
- 3. By reason of her conduct, Ms Imenda is liable to disciplinary action pursuant to:
  - a. bye-law 8(a)(i) or in the alternative
  - b. bye-law 8(a)(iii) in respect of allegation 2a above.

#### **BRIEF BACKGROUND**

- 4. On 17 February 2009 Ms Imenda became an ACCA registered student.
- 5. On 25 April 2023, ACCA received an email from Person A notifying ACCA that Ms Imenda offered to pay him money to write an ACCA exam on her behalf. He attached a copy of a WhatsApp message he sent to Ms Imenda stating that he could help by tutoring her for the exam but was unable to sit the exam for her.
- 6. ACCA's Operational planning team's manager identified Ms Imenda based on the phone number provided by Person A.
- 7. ACCA contacted Person A, and he was able to provide an audio recording of his conversation with Person B, who had connected him to Ms Imenda, and a recording of a conversation with Ms Imenda. The audio recordings were transcribed by a transcription company and added to Person A's witness statement.
- 8. On 15 August 2023, Ms Imenda was formally notified of ACCA's investigation and sent a serious of questions relating to the allegations. She was also

provided with a copy of the audio recording of the conversation with her provided by Person A.

9. Ms Imenda replied on 16 August 2023, stating that,

- *"I have received this communication with a sense of shock. The malice is fully calculated to damage me. I have a right to decline people's requests and desires, but I never knew I could be framed like this.*
- *I did not offer [Person A] any money to write an exam for me. What I needed him to do is to tutor me, but I never wanted physical classes if you listen to the conversation it never talked about writing exams, it referred to writing. I did not want physical classes with him, I suggested he can be giving me written explanations, which he said he cannot do, we met in person the first time I was referred to him, I was not comfortable to have physical classes with him. That led to my suggestion that he could do written explanations. I am not aware of any money being suggested that is new to me as we had not agreed or discussed on how much I could pay for tutoring me by way of written explanations.*
- *I knew [Person B] from the [University] who recommended [Person A] as one who could tutor me.*
- *I came to know [Person A] when I approached him to tutor me.*
- *I am surprised that there can be such a calculated response or scheme, I only knew this man when I was referred to him to assist in tutoring me.*
- *Yes it is me as I needed him to be sending me written explanations to help me understand certain topics, but he insisted on physical classes. This is the writing I referred to. I am so surprised to hear this.*
- *It does not take rocket science to read that he had literally framed me, we had a discussion on phone which did not speak about ACCA, he then sent a message to talk about ACCA, it leaves much to be desired. I never saw that message until it was brought to my attention, it is also clear in his malice because the screenshot shows that he blocked me, this was done so that once I see the message I cannot respond. This is not fair.*
- *I do not have any other information as I did not subscribe to his malice, this only existing with him wanting physical classes. I wanted to have written*

*explanation or online classes. He did not want my request for written explanation on selected topics.*

- *I am so disappointed that whatever motives he had to suggest physical classes would result in this. I have never contemplated any exam malpractices, and I can never do that”.*

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

15. The Committee had listened carefully to the submissions made by Ms Terry and also considered legal advice, which it had accepted.

### **Allegation 1**

16. The Committee noted that Ms Imenda has accepted that she communicated with Person A in relation to her forthcoming ACCA exams and that she was seeking a form of assistance from Person A. The issue for the Committee to resolve was the content of that communication which is not agreed by Ms Imenda.
17. In reaching its findings of fact in respect of Allegation 1, the Committee had considered carefully, and accepted, the evidence of the following witnesses:
  - (i) Statement of Mr McSkimming, ACCA Operational Planning Manager, dated 19 September 2023, and;
  - (ii) Person A’s statement and supplementary statement dated 23 July 2023.
18. In his statement Mr McSkimming confirmed that ACCA received an email from Person A notifying ACCA that an ACCA student allegedly offered to pay him to write exams on her behalf. Mr McSkimming searched ACCA’s database and matched the student’s telephone number with Ms Imenda’s records.
19. In his statements Person A stated that he does not know Ms Imenda and became aware of her need for help with an exam through Person B, who was a university lecturer, and a contact he had met through a friend. On 24 April

2023 Person B called him and said that one of his students, Ms Imenda, needed help with preparation for and during an exam. Person B was vague about what Person A was required to do. Person B proposed a fee of K3000 per subject for three subjects and a K700 commission for the connection.

20. Person A stated that in the afternoon of 24 April 2023, he received a call from Ms Imenda via her mobile number. Person A informed Ms Imenda that he had helped students prepare for exams before. Ms Imenda outlined that she wanted Person A to write on her behalf either a computer based or paper-based exam. Person A should send her an old passport sized photo because Ms Imenda knew a man who produced fake national registration cards for exam cheating purposes. She said that she would send the initial K3000 by airtel mobile transfer within a few minutes.
21. Person A added that Ms Imenda explained that she held a management position at her place of work and had received an ultimatum to obtain a full qualification by the end of the year.
22. Person A added that he realised that what Ms Imenda was asking him to do was unethical. He told her that he would get back to her and sent her a WhatsApp message. Person A provided a copy of the WhatsApp message as follows:

*“Good afternoon Madam. I can help you by tutoring you to prepare for June 2023 ACCA exams not where I do the actual writing on your behalf. I await to hear from you. I have never done that”*

23. The WhatsApp message was sent at 13.08 on 25 April 2023 and was marked with two blue ticks. The Committee was satisfied that this indicated that the message had been read by Ms Imenda. There was no response to this message from Ms Imenda. On 20 May 2023 Person A blocked Ms Imenda to avoid any further contact with her.
24. In his statement Person A described two subsequent telephone conversations and provided a recording he had made of these conversations. The first



conversation was a call from Person B. In this conversation Person A confirmed that he had refused to sit the exam on Ms Imenda's behalf. Person B stated that what Ms Imenda wanted was "*some more tuition side by side the online exam*" and that "*she wanted someone to write for her*". The second telephone conversation was with Ms Imenda. In this conversation Ms Imenda stated, "*because you're telling me that you can no longer be part of this*". Person A asked, "*you mean the writing for you*". Ms Imenda replied "yes".

25. In his oral evidence Person A expanded on the details set out in his witness statements. Person A holds a position as an auditor for a department in the [PRIVATE] and he is a part-time lecturer to a number of institutions. Person A outlined the background to his contact with Person B and stated that Person B had provided him with Ms Imenda's telephone number. Person A stated that when he spoke to Person B it was unclear what help he was being asked to provide to assist Ms Imenda in preparing for her exams, but he believed that he was being asked to provide tutoring.
26. Person A stated that his next telephone conversation was with Ms Imenda and that she conveyed to him the pressure that she was under from her employer to complete her ACCA qualification. Person A then outlined Ms Imenda's proposals for the assistance she was seeking. It involved assistance with two types of ACCA exam, the on-line computer-based exam, or an exam conducted by the student in person at an examination centre. Person A had no prior experience of on-line computer-based exams because such exams were not employed by ACCA when he completed his exams. He said that Ms Imenda explained to him the use of security features for on-line exams including that the exam proctor may request a video check of the room.
27. Person A also provided further details of the arrangement proposed by Ms Imenda for the creation of false identity cards to sit the exam. This would include use of a false national registration card, which would include his photograph, but Ms Imenda's name and date of birth.

28. Person A confirmed that the conversation with Ms Imenda included discussion of payment, the amount of payment of K3,000 and the method of payment through airtel mobile transfer.
29. Person A expressed to the Committee his view about Ms Imenda's proposal. He said that it was unethical and amounted to the undermining of ACCA's exams. He believed that it involved the commission of a crime and was against the public interest.
30. The Committee noted that Person A's oral evidence was consistent with the documentary evidence. Person A was not able to recollect some details relating to the dates of his telephone conversations, but the Committee was of the view that this was understandable due to the passage of time and did not undermine his credibility. Person A had made his complaint to ACCA and reported Ms Imenda to anti-corruption officials very shortly after his first conversation with Ms Imenda and his WhatsApp message. Person A gave a credible explanation for his decision to block Ms Imenda's access on the WhatsApp account on 20 May 2023. He did not wish to retain her details in his contact list and accidentally make contact with her. The Committee considered that the additional details provided by Person A in his oral evidence were credible. Person A did not meet Ms Imenda and had only two brief telephone conversations with her. The Committee did not find that Person A had a motive to lie about Ms Imenda or to "frame" her as she suggested in her written comments.
31. The Committee found that Person A was a credible and reliable witness. It concluded, on the balance of probabilities, that Ms Imenda had asked Person A to sit an exam for her in return for payment.
32. On this basis, the Committee found the facts of Allegation 1 proved.

**Allegation 2(a)**

33. The Committee relied upon its findings of fact under Allegation 1 above.

34. Regulation 10 of the Exam Regulations as applicable in 2023 states:

*“You may not engage in any irregular conduct designed to assist you in your exam attempt or provide any improper assistance to any other exam entrant in their exam attempt”*

35. Ms Imenda’s request to Person A to sit an exam on her behalf was conduct designed to assist her in her exam attempt and there is no other possible explanation for her conduct.

36. The Committee therefore found Allegation 2(a) proved.

**Allegation 2(b)**

37. In reaching its decision in respect of this allegation, the Committee applied the test for dishonesty as set out and prescribed in the decision of the Supreme Court in the case of *Ivey v Genting Casinos Ltd t/a Crockfords* [2017] UKSC 67.

38. The Committee was satisfied that Ms Imenda, as an ACCA student about to participate in exams, was aware of the basic requirement that she should not receive any improper assistance in an exam and that such assistance would give her an unfair advantage over other students. Ms Imenda knew that she should not seek help from any other individual to write her exam for her.

39. The Committee was satisfied that, by the standards of ordinary decent people, Ms Imenda’s conduct would be considered to be dishonest. Consequently, the Committee found Allegation 2(a) proved.

**Allegation 2(c)**

40. On the basis that this allegation was pleaded in the alternative to Allegation 2(b), the Committee made no finding in respect of it.

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

41. Taking account of its findings that Ms Imenda had acted dishonestly, the Committee was satisfied that she was guilty of misconduct. Such conduct fell far below the standards expected of an accountant and member of ACCA and could properly be described as deplorable. In the Committee's judgement, it brought discredit to Ms Imenda, the Association and the accountancy profession.
42. The Committee found Allegation 3(a) proved.

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

43. 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**

44. 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 listened to submissions from Ms Terry, and to legal advice from the Legal Adviser, which it accepted.
45. 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.
46. The Committee considered whether any mitigating or aggravating factors featured in this case.
47. The Committee accepted that there were no previous findings against Ms Imenda. There was no evidence of any other mitigating factors in this case.

48. As for aggravating features, on the basis of the Committee's findings, it had been established that Ms Imenda's behaviour had been dishonest. Her actions involved planning and were pre-meditated. Her dishonest conduct was for her personal gain and was designed to deceive her regulator. The dishonesty involved an element of sophistication involving other individuals who would prepare false documents and write the exams in place of Ms Imenda. There was also a risk that Ms Imenda would have gained qualification as an accountant without the necessary competence or experience. Ms Imenda therefore presented a risk to the reputation of the profession and could have caused harm or had an adverse impact on members of the public.
49. The Committee noted that, in her written response, Ms Imenda had shown neither insight nor remorse.
50. The Committee considered the sanctions in ascending order. It concluded that taking no action or imposing an admonishment or a reprimand would not adequately reflect the seriousness of the Committee's findings.
51. The Committee then considered whether a severe reprimand would be an appropriate sanction. The Committee considered the Guidance for disciplinary sanctions paragraph C4.1. The Committee did not consider that there were particular circumstances of the case or mitigation advanced which satisfied the Committee that there was no continuing risk to the public. There was also no evidence of Ms Imenda's understanding, and appreciation of the conduct found proved. The majority of the factors listed in paragraph C41 were not present.
52. Taking account of the seriousness of its findings, the Committee did not consider that a severe reprimand would be sufficient or proportionate. Ms Imenda had been found to have acted dishonestly. In the Committee's judgement, Ms Imenda's overall conduct was fundamentally incompatible with being a student of ACCA and risked undermining the integrity of ACCA membership. The Committee adopted the Guidance which stated that the reputation of ACCA and the accountancy profession was built upon the public being able to rely on a student or member to do the right thing in difficult

circumstances. It noted this was a cornerstone of the public value which an accountant brings.

53. The Committee had considered whether there were any reasons which were so exceptional or remarkable that it would not be necessary to remove Ms Imenda from the student register of ACCA but could find none.
54. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Ms Imenda shall be removed from the student register of ACCA.

#### **COSTS AND REASONS**

55. ACCA applied for costs in the sum of £6,345.50. The Committee was provided with a schedule of costs. The Committee was satisfied that the costs claimed were appropriate and reasonable.
56. Despite being given the opportunity to do so, Ms Imenda did not provide any details of her means or provide any representations about the costs requested by ACCA. There was, therefore, no evidential basis upon which the Committee could make any reduction on this ground.
57. The Committee had in mind the principle that members against whom an allegation has been proven should pay the reasonable and proportionate cost of ACCA in bringing the case. This was because the majority of members should not be required to subsidise the minority of members or students who, through their own failings, have found themselves subject to disciplinary proceedings.
58. The Committee made an order for costs in the sum of £6,345.50.

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

59. In light of its decision, the Committee considered whether the order should take effect at the conclusion of the appeal period or whether it should have

immediate effect. The Committee noted Ms Imenda's status as a student member and it was satisfied that the order should take effect at the conclusion of the appeal period.

**Ms Ilana Tessler**  
**Chair**  
**06 November 2024**