

## HEARING

**DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF  
CHARTERED CERTIFIED ACCOUNTANTS****REASONS FOR DECISION**

**In the matter of:** Miss Aye Aye Aung

**Heard on:** Thursday, 01 August 2024

**Location:** Remote via Microsoft Teams

**Committee:** Ms Kathryn Douglas (Chair)  
Dr Beth Picton (Accountant)  
Dr Jackie Alexander (Lay)

**Legal Adviser:** Mr Robin Havard

**Persons present**

**and capacity:** Mr James Halliday (ACCA Case Presenter)  
Ms Sofia Tumburi (Hearings Officer)

**Summary** Allegations 1(a),(b)(i) & (c)(i) proved.

**Sanction** Removal from student register.

**Costs:** £5,500

**PRELIMINARY APPLICATIONS****SERVICE OF PAPERS**

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1. The Committee had considered the following documents: a Hearing Bundle (pages 1 to 60), and a Service Bundle (pages 1 to 25). The Committee had also considered legal advice which it had accepted.
2. The Committee had read the letter dated 04 July 2024 containing the Notice of Proceedings, sent on the same day by ACCA by email to Miss Aung. It had noted the subsequent emails sent to Miss Aung with the necessary link and password to enable Miss Aung to gain access to the letter and the documents relating to this hearing.
3. The Committee was satisfied that such emails had been sent to her registered email address in accordance with regulation 22 of the Complaints and Disciplinary Regulations 2014 as amended ("CDR"). The Committee had noted that the emails had been delivered successfully. The Committee accepted that, in accordance with CDR22(8)(b), service by email is deemed to have been effected on the same day that it is sent.
4. The Committee was satisfied that this was in compliance with CDR10(1)(a).
5. The emails and the documents to which Miss Aung had access also contained the necessary information in accordance with CDR10(1)(b).
6. Consequently, the Committee decided that there had been effective service of proceedings on Miss Aung in accordance with CDR10 and 22.

#### **PROCEEDING IN ABSENCE**

7. On 12 July 2024, in the absence of any response from Miss Aung to the email of 04 July 2024, ACCA sent an email to Miss Aung at her registered email address asking her to indicate whether she intended to attend the hearing or whether she was content for the hearing to proceed in her absence. The email reminded her of the date of hearing and of her ability to join the hearing either by telephone or video link. ACCA also enquired whether Miss Aung would require the assistance of an interpreter. The email had been delivered successfully. There was no response.

8. On 19 July 2024, ACCA attempted to call Miss Aung on two occasions on the number registered with ACCA but there was no response nor was there the option to leave a message.
9. On 19 July 2024, ACCA sent a further email to Miss Aung, again reminding her of the date of hearing and asking her to confirm if she intended to attend the hearing. The email was delivered successfully but there was no response.
10. On 24 July 2024, ACCA sent another email to Miss Aung having, once again, attempted unsuccessfully to contact her by phone. Miss Aung was asked once more whether she intended to attend and, if so, whether she would need the help of an interpreter which would be at ACCA's expense. Whilst the email was delivered successfully, there was no response.
11. On 31 July 2024, ACCA sent a further email to Miss Aung in effectively the same terms as the previous email on 24 July 2024, having attempted to contact her by phone. The email was delivered successfully. However, once again, there was no response.
12. On the same day, ACCA sent Miss Aung an email containing the link to enable Miss Aung to join the hearing. The email was delivered successfully but Miss Aung had failed to respond, and has not attended the hearing today.
13. The Committee was satisfied that ACCA had done all that it could reasonably be expected to do to engage Miss Aung in the hearing. The Committee also took into consideration the fact that the email address to which ACCA had sent the above emails to Miss Aung was the same email address used by Miss Aung when sending emails to ACCA in May 2023.
14. The Committee concluded that Miss Aung was aware of the hearing date but that she had no intention of participating in the hearing, nor had she requested an adjournment.
15. The Committee concluded that Miss Aung had voluntarily absented herself from the hearing, which she could have joined by telephone or video link. She had therefore waived her right to attend.

16. The Committee was also satisfied that, taking 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, as stated, no such application had been made.
17. Finally, the Committee considered that it was in a position to reach proper findings of fact on the evidence presented to it by ACCA.
18. In accordance with CDR10(7), the Committee ordered that the hearing should proceed in the absence of Miss Aung.

## **ALLEGATIONS**

### **ALLEGATION 1**

- (a) During a Financial Accounting examination held on 22 January 2023, Miss Aye Aye Aung, an ACCA student, was in possession of unauthorised materials comprising handwritten notes, contrary to Examination Regulation 4;
- (b) Miss Aye Aye Aung conduct in respect of 1(a) above was:
  - (i) Dishonest, in that Miss Aye Aye Aung intended to use the unauthorised materials gain an unfair advantage in the exam; in the alternative
  - (ii) Failed to demonstrate integrity.
- (c) By reason of her conduct, Miss Aye Aye Aung is:
  - (i) Guilty of misconduct pursuant to bye-law 8(a)(i),or
  - (ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of 1(a)above

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

### **ALLEGATION 1(A)**

19. In reaching its findings in respect of allegation 1(a), the Committee relied upon the email correspondence and documents contained in ACCA's bundle. It noted the report provided by the invigilator which had been prepared following the exam, together with the evidence of the Qualification Content Lead ("QCL"), Person A, as set out in an email dated 24 January 2023. The Committee had also read the responses that had been provided by Miss Aung in the course of the investigation. The Committee had taken account of the submissions of Mr Halliday. Finally, the Committee listened to legal advice, which it accepted.
20. On 28 December 2022, ACCA registered Miss Aung as a student. As such, the Committee found that, throughout the material time, she was bound by ACCA's Bye-laws and Regulations. The Committee found that this included the Examination Regulations which were provided to Miss Aung prior to her sitting the exam.
21. Examination Regulation 1 provides as follows:

*"You are required to adhere at all times to the examination regulations. If you are found to be in breach of any of these regulations or fail to adhere to the guidelines below, you may become liable to disciplinary action, pursuant to ACCA Bye-law 8, which could result in your removal from the student register."*
22. Prior to 22 January 2023, Miss Aung had not attempted the Financial Accounting (FA) exam and had not previously passed any ACCA examinations.
23. On 22 January 2023, Miss Aung attended the Asia Saint Group exam centre in order to sit the Financial Accounting examination. The exam commenced at 6:45am and was due to last for 3 hours 20 minutes.
24. The Committee was satisfied that all candidates for ACCA examinations were made aware of the Examination Regulations. Prior to an examination, all candidates receive an attendance docket which contained the ACCA guidelines and Regulations.
25. With regard to the events which took place at the exam on 22 January 2023, in a SCRS1B form, completed on the day of the exam by the invigilator, Person B, they stated, *"I found two pages with paper size with 10.5\* 7.5 inches, rectangle. As usual I checked the candidate's outside her body when she enter*

*to exam to examination room. I especially check the calculator and here National Register Card (NRC) as an investigator's role and responsibility and nothing abnormal was found (sic)."*

26. Person B further confirmed that the unauthorised material had been found at *"08:45:21 at the end of the exam."* Person B stated, *"When she finished the exam, I have noticed that the unauthorized materials were found under the rough working paper which are provided by exam centre for their draft calculation (sic)."*
27. When asked whether the unauthorised material was believed to have been used, Person B asserted, *"Yes. I suspected that the unauthorized materials have been used as I check the hand writing between the rough working paper and that unauthorised materials. I found the handwriting is the same (sic)."*
28. The invigilator also wrote in their report, *"When she finished the exam I have notice that the unauthorized materials were found under the rough working paper which are provided by exam center for their draft calculation (sic)."*
29. Person B confirmed that the student, *"Confessed that the unauthorized materials are hers and she apologized and explained that she never that unauthorized materials during the exam when I show them to her (sic)"* and that Miss Aung, *"apologized and requested not to inform her case to ACCA, she promised that such kind of behaviour never happen again (sic)."*
30. On the day of the Financial Accounting examination, Miss Aung completed a SCRS2B form in relation to the incident and the unauthorised materials confirming that she was in possession of unauthorised materials comprising of *"two pages of gist of note that I have been taking" (sic)* and that they were found in her possession when she *"finished the exam."*
31. When asked whether she intended to use the unauthorised materials, Miss Aung confirmed that she *"did not use the materials/item."*
32. When asked whether she intended to gain an unfair advantage from the unauthorised materials, Miss Aung had stated, *"No."*

33. Miss Aung also stated, *“Those notes are only of my study reference; nothing related to the exam.”*
34. Additionally, Miss Aung stated, *“I would like to request you to consider my condition very leniently as those unauthorized materials for reference of my study. In addition, I did not passed the exam and I am really afraid of breaching the exam rule and regulation. I deeply apologize about the incident...”*
35. Miss Aung had signed the form confirming that the facts as specified were a true reflection of the incident. **(page 34)**
36. The Qualification Content Lead (QCL) for FA/ FFA ACCA examinations had confirmed,

*“In my opinion, any unauthorised material gives an unfair advantage.*

*It looks like the following:*

- *Pics 1 & 2 show the layout/ line items for a statement of financial position (although they aren't constructing one in the FFA exam, they still need to be aware of its format I would argue)*
- *Pic 2 lists types of error/omission which is part of the FFA syllabus. • Pic 3 is just the same.*
- *Pic 4 is a 'cheat sheet' without doubt - this tells them what to do with regards adding/ subtracting line items in a statement of cash flows and appears to show some account examples.*

*Regardless of whether a question in the exam related to this, these notes are clearly an attempt at cheating (otherwise, why were they hidden underneath that clipboard).”*

37. Whilst the Committee took full account of the fact that elements of what was said by the QCL represented their opinion, it nevertheless noted, and accepted, their evidence regarding the relevance of the unauthorised material to the syllabus on which the exam was based. The Committee had also studied the photographs of the unauthorised materials and where they had been found.

38. On 04 May 2023, ACCA's Investigation Department, via the Investigations Officer, wrote to Miss Aung to advise her of the complaint which had been received and requested her comments in this regard.

39. On 08 May 2023, Miss Aung provided a response in which she wrote,

*"1. Yes, I accept that I was in possession of notes consisting of unauthorised materials during the financial Accounting examination on 22 January 2023*

*2. Yes, I accept the unauthorised materials were relevant to the syllabus.*

*3. Yes, I intend to use the unauthorised material before exam time but I didn't use it during exam time.*

*4. No, I didn't really used the unauthorised materials during the exam and then I fail the exam that Financial Accounting examination on 22 January 2023.*

*5. I'm deeply apologise for my taking this without permission and I breaking rules and regulations so I promise never to make a mistake like this again.*

*I'm really of breaching the exam rule and regulations of deeply apologize about the incident and allow me to continue my ACCA study (sic)."*

40. On the basis of what had been said by the QCL for FA/FFA ACCA examinations, the Committee was satisfied that the information contained in the handwritten notes found on Miss Aung's desk was relevant to the syllabus on which the examination was based. Indeed, this was accepted by Miss Aung in her email of 08 May 2023. Finally, the Committee noted that the unauthorised material had been found under the rough working paper provided to students sitting the exam.

41. The Committee was satisfied that the handwritten notes amounted to unauthorised material, and that such material was in the possession of Miss Aung during the exam.



42. The Committee therefore found that, in breach of Examination Regulation 4, Miss Aung was in possession of unauthorised material during the course of the exam.
43. In accordance with Examination Regulation 6, the Committee had considered whether Miss Aung had established, on the balance of probabilities, that she had not intended to use the unauthorised materials to gain an unfair advantage in the exam.
44. The Committee was not satisfied that the explanation provided by Miss Aung was credible. Miss Aung had initially indicated that the notes were not relevant to the exam. The QCL had confirmed that the notes were relevant not only to the syllabus but also could have provided assistance in the exam.
45. Even if the notes were not directly relevant to the exam questions, Miss Aung subsequently accepted that the notes were relevant to the syllabus on which the exam was based, and she would not have known the questions she was required to answer until the exam commenced. The Committee also considered it was significant that the notes had been found under the rough working paper provided to the students which indicated an attempt to conceal the notes from view, but have them to hand during the exam.
46. In the circumstances, the Committee was satisfied, on the balance of probabilities, that Miss Aung had been in possession of unauthorised material in the exam on 22 January 2023 with the intention of using them to gain an unfair advantage in the exam.
47. On this basis, the Committee found allegation 1(a) proved.

**ALLEGATION 1(B)(I)**

48. The Committee relied on its findings of fact under allegation 1(a) above.
49. The Committee reminded itself of the test for dishonesty as set out in the case of *Ivey v Genting Casinos* [2017] UKSC 67.

50. The Committee took into account the finding that Miss Aung, being in possession of notes during the exam which were relevant to the syllabus being tested in that exam, did so in order to gain an unfair advantage.
51. The Committee was satisfied that, by the standards of ordinary decent people, such conduct, namely seeking to gain an unfair advantage in a professional exam, would be considered to be dishonest.
52. Consequently, the Committee found allegation 1(b)(i) proved.

#### **ALLEGATION 1(B)(II)**

53. On the basis that this allegation was pleaded in the alternative to allegation 1(b)(i), the Committee made no finding in respect of it.

#### **ALLEGATION 1(C)(I)**

54. Taking account of its findings in respect of allegations 1(a) and 1(b)(i) regarding Miss Aung's conduct during the examination, and its finding that Miss Aung had been dishonest, the Committee was satisfied that she was guilty of misconduct in that such conduct could properly be described as deplorable. In the Committee's judgement, it brought discredit to Miss Aung, the Association and the accountancy profession.
55. Therefore, the Committee found allegation 1(c)(i) proved.

#### **ALLEGATION 1(C)(II)**

56. On the basis that this allegation was pleaded in the alternative to allegation 1(c)(i), the Committee made no finding in respect of it.

#### **SANCTION AND REASONS**

57. 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 also listened to the submissions of Mr Halliday, and legal advice from the Legal Adviser which it accepted.

58. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no order.
59. 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.
60. The Committee considered whether any mitigating or aggravating factors featured in this case.
61. The Committee accepted that there were no previous findings against Miss Aung. However, the Committee took into consideration the fact that, at the time the exam took place on 22 January 2023, Miss Aung had only been a student member since 28 December 2022 i.e. less than one month.
62. The Committee had no information regarding the personal circumstances of Miss Aung nor had it been provided with any testimonials or references as to Miss Aung's character. Indeed, there had been no engagement by Miss Aung in the course of these disciplinary proceedings.
63. As a consequence, whilst there was an acceptance by Miss Aung that she should not have been in possession of the unauthorised material during the exam, the Committee was not satisfied that Miss Aung had shown any genuine insight into the seriousness of her conduct. However, the Committee acknowledged that she had apologised for her behaviour but, again, this had to be considered alongside her request for the examination board not to report the matter to ACCA.
64. The Committee had found Miss Aung to have acted dishonestly during the course of an exam which the Committee considered to be very serious.
65. The Committee found such serious conduct to be aggravated in the following ways.

66. The Committee did not consider that Miss Aung had shown true insight into her conduct. The Committee also found that her conduct necessitated a level of premeditation and planning.
67. On the basis of its findings, the Committee concluded that neither an admonishment nor a reprimand would represent a sufficient and proportionate outcome. Neither sanction would adequately reflect the seriousness of the Committee's findings.
68. The Committee then considered whether a severe reprimand would be an appropriate sanction. Again, taking account of the seriousness of its findings, and reflecting on the criteria suggested in the Guidance, the Committee did not consider that a severe reprimand would be sufficient or proportionate.
69. The whole purpose of the Exam Regulations is to maintain the integrity of the process to ensure that the process is fair and that, in following that process and complying with the Regulations, it represents a proper test as to a person's competence to become an accountant.
70. Miss Aung's conduct during the exam represented conduct which was fundamentally incompatible with being a student member of ACCA. Whilst not obliged to do so, her lack of engagement in these disciplinary proceedings, and her failure to show any genuine insight led the Committee to conclude that, currently, there was no guarantee that Miss Aung would behave in a manner expected of a member of ACCA.
71. The Committee had considered whether there were any reasons which were so exceptional or remarkable that it would not be necessary to remove Miss Aung from the student register but could find none.
72. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Miss Aung shall be removed from the student register.

### **COSTS AND REASONS**

73. The Committee had been provided with a simple costs schedule (page 1) and a detailed costs schedule (pages 1 and 2) relating to ACCA's claim for costs.

74. The Committee concluded that ACCA was entitled to be awarded costs against Miss Aung, all allegations having been found proved. The amount of costs for which ACCA applied was £6,385. The Committee did not consider that the claim was unreasonable but the hearing had taken less time than estimated.
75. Miss Aung had not provided ACCA with any documentary evidence of her means. The Committee was satisfied that, in the correspondence sent to her, Miss Aung had been warned at the outset of the importance of providing details of her financial circumstances and of ACCA's intention to apply for costs if the allegations were found proved.
76. In the absence of any information from Miss Aung, the Committee approached its assessment on the basis that she was able to pay any amount of costs awarded against her.
77. In all the circumstances, and in exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £5,500.00 to reflect the fact that the hearing had not lasted a full day.

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

78. The Committee had considered whether the order should have immediate effect. However, ACCA did not seek such an order and, taking account of Miss Aung's removal from the student register, the Committee did not consider that she presented a current risk to the public. It therefore concluded it was not in the interests of the public to make an order which takes effect immediately.
79. The Committee decided that this order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

**Ms Kathryn Douglas**  
**Chair**  
**01 August 2024**