

HEARING
DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF
CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Jivitesh Dhurumsing
Heard on:	Tuesday, 06 August 2024
Location:	ACCA, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU. Virtual hearing using Microsoft Teams.
Committee:	Mr David Tyme (Chair) Ms Sue Gallone (Accountant) Ms Sue Heads (Lay)
Legal Adviser:	Mr Charles Apthorp (Legal Adviser)
Persons present and capacity:	Mr James Halliday (ACCA Case Presenter) Ms Lauren Clayton (Hearings Officer)
Summary:	Removed from Student Register to take effect immediately
Costs:	£4,743.00

SERVICE OF PAPERS

1. Mr Dhurumsing was neither present nor represented.
2. The Committee considered the service bundle (1) with pages numbered 1- 19 in order to determine whether the Notice of Hearing ("the Notice") dated 09 July 2024 had been served in accordance with the provisions of the

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

Complaints and Disciplinary Regulations 2014 (amended 2020) ("the Regulations")

3. The Committee noted that the email sent by Ms Clayton to the member 02 August 2024 at 15.48 hrs incorrectly referred to the hearing date being the 06 July 2024, however the email sent on the 05 August 2024 referred to the correct hearing date as being the 06 August 2024, correcting the error. The Committee noted the delivery receipt contained in the service bundle.
4. The Committee noted that the Notice had been sent to Mr Dhurumsing's registered email address held by the ACCA and complied with the other requirements of the Regulations.
5. The Committee was satisfied that this was effective service under the regulations.

PROCEEDING IN ABSENCE

6. The Committee considered whether it should proceed in Mr Dhurumsing's absence and recognised it could only do so with care and caution.
7. The Committee noted that Mr Dhurumsing had not engaged with the investigation and had not made an application for the hearing to be adjourned. It concluded that if the hearing was adjourned to another date there was no indication that Mr Dhurumsing would attend. The Committee concluded that Mr Dhurumsing was aware of or had the means to be aware of the hearing and had voluntarily absented himself.
8. The Committee noted that emails which had been sent in December 2022 and January 2023 to Mr Dhurumsing's registered email address had been opened and therefore concluded it was an active email address at that time service took place.

9. The Committee recognised that there was a strong public interest in regulatory proceedings being considered and concluded expeditiously, particularly given the serious nature of the allegations.
10. The Committee determined that it was fair and just to proceed in Mr Dhurumsing's absence in accordance with its discretionary power at regulation 10(7) and that a fair hearing could take place in his absence.
11. The Committee were provided with the following bundles: hearing bundle (1-53) and a service bundle (1-19).

AMENDMENT OF THE ALLEGATIONS

12. At the outset of the hearing Mr Halliday applied to amend a typographical error in Allegation 4 where Mr Dhurumsing was referred to as 'she' replacing it with 'he'.
13. The Committee considered that the amendment could be made without prejudice to Mr Dhurumsing and directed that allegation 4 be amended as requested.
14. Mr Dhurumsing faced the following amended allegations:

ALLEGATIONS

1. During a Financial Management examination on 10 June 2022, Mr Jivitesh Dhurumsing:
 - a. Was in possession of unauthorised materials comprising of handwritten notes, contrary to Examination Regulation 4.
2. Mr Dhurumsing used / or attempted to use the notes referred to in allegation 1(a) above to gain an unfair advantage.

3. Mr Dhurumsing's conduct in respect of 1(a) above:
 - a. Was dishonest, by reason of the matters referred to in allegation 2; or in the alternative,
 - b. Demonstrated a failure to act with integrity.

4. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Mr Dhurumsing failed to co-operate fully with the investigation of a complaint in that he failed to respond fully to any or all of ACCA's correspondence dated:
 - a. 13 December 2022;
 - b. 16 January 2023.

5. By reason of his conduct, Mr Dhurumsing is:
 - a. Guilty of misconduct pursuant to bye-law 8(a)(i) in respect of any and all of the allegations at 1 to 3 above; or alternatively;
 - b. Liable to disciplinary action pursuant to bye-law 8(a)(iii) in respect of allegation 1 and 4.

BRIEF BACKGROUND

15. Mr Dhurumsing registered as an ACCA student on the 22 March 2013. On the 10 June 2022 Mr Dhurumsing attended an examination centre in order to sit, a Financial Management examination (ECCS 8652 exam). Prior to the exam commencing Mr Dhurumsing was provided with an attendance docket which contained the ACCA guidelines and the examination Regulations.

16. During the exam the invigilator's attention was drawn to Mr Dhurumsing hiding a small piece of folded paper in his scratch paper. A report filed later that day (SCRS1B) by the invigilator noted he had in his possession unauthorised material. Mr Dhurumsing completed a SCRS2B form in relation to the incident

and finding of unauthorised material which stated that he had *“a small paper with some formula.”*

17. In addition, Mr Dhurumsing stated that the unauthorised materials were relevant to the syllabus being examined and that *“The paper consisted of some formulas for the FM paper”* and the purpose for which he had the unauthorised materials was *“I would have verified the formula in case I needed or forget something.”*
18. When asked whether he intended to use the unauthorised materials, Mr Dhurumsing has stated, *“Yes, in case there were any questions afterwards.”* When asked whether he intended to use the unauthorised materials, Mr Dhurumsing has stated, *“Yes, in case there were any questions afterwards.”* Mr Dhurumsing has signed the SCRS2B form confirming that the facts as specified were a true reflection of the incident.
19. The Committee reviewed the photocopies of the unauthorised material which were included in the bundle and noted that it contained formula which could assist Mr Dhurumsing in completing the Financial Management examination.
20. ACCA’s Exam’s Conduct Department wrote to Mr Dhurumsing in relation to the irregularity that had occurred at the exam centre and requested a response from him. Mr Dhurumsing did not provide a response.
21. Mr Halliday in submissions relied on the documentary evidence and the two reports. He did not call any witnesses. As set out above Mr Dhurumsing made no written responses to questions put by the ACCA in relation to the issues in this case, but had completed and signed the SCRS2B report. The Committee considered these carefully, reviewed the exhibits and took account of the written submission of ACCA. The Committee received advice from the Legal Assessor.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

Allegation 1a

22. The Committee find Allegation 1a proved.
23. The Committee had regard to the Exam Regulations, which it was satisfied Mr Dhurumsing was provided with and was aware of the instructions set out in the instruction sheet.
24. The Committee reach the following conclusions:
 - a. Mr Dhurumsing had failed to comply with the clear instructions, that he had been provided with, that no unauthorised material should be taken into the examination.
 - b. Mr Dhurumsing was aware that it was a wilful and deliberate breach of the Exam Regulations to take unauthorised material into the examination.

Allegation 2

25. The Committee found allegation 2 proved.
26. In reaching this finding the Committee took into account the fact Mr Dhurumsing was of previous good character, having no previous regulatory findings made against him. The Committee at allegation 1a have previously found that Mr Dhurumsing had failed to comply with instructions not to bring unauthorised material into the examination. The Committee concluded that there was clear evidence from Mr Dhurumsing that he intended to gain an advantage in the examination by the bringing into the exam with the intention of using the formula written on the piece of paper to assist him in answering the questions.
27. In addition the Committee had regard to Exam Regulation 6, it determined that the unauthorised material was relevant to the exam syllabus being examined and that Mr Dhurumsing had not discharged the burden on him to show that he did not intend to use the material to gain an unfair advantage in the exam. The Committee therefore concluded that he used the material present to assist him

in anticipation of relevant questions forming part of the exam.

Allegation 3a

28. In consequence of the previous findings where the Committee had found that Mr Dhurumsing was aware that he had taken unauthorised material into the examination, had sought to conceal that fact from the invigilator and intended to use the material to cheat in the exam. Having established his state of mind and knowledge at the relevant time the Committee went on to consider whether this would be considered by a member of the public to be dishonest conduct. The Committee found that this was dishonest conduct by the standards of ordinary decent people and therefore found allegation 3a) proved.
29. The Committee did not go on to consider allegation 2 b whether there was a lack of integrity as this had been put as an alternative allegation if allegation 3 a was not proved.

Allegations 4 a and b

30. The Committee noted the correspondence sent to Mr Dhurumsing on the 13 December 2022 and 16 January 2022 and the obligation of an ACCA student or member to cooperate with an investigation. It was satisfied that Mr Dhurumsing had received and opened the emails sent by ACCA and as a result was aware of the allegations. It was satisfied that Mr Dhurumsing had not responded to either letter and therefore found allegation 4a and b proved.

MISCONDUCT AND LIABILITY TO DISCIPLINARY ACTION

31. In respect of allegation 5a the Committee considered that honesty is a fundamental tenet of professionalism and Mr Dhurumsing had been dishonest during an exam. In the Committee's view the level of dishonesty was serious. Mr Dhurumsing 's dishonest conduct fell far short of the standards expected of a member of the accountancy profession. It could not be regarded as anything other than entirely unacceptable behaviour which brought the profession into disrepute and plainly constituted misconduct.

32. The Committee did not go on to consider allegation 5b whether there was a breach of bye-law 8(a)(i) as this had been put as an alternative allegation if allegation 3 (a) was not proved.

SANCTION(S) AND REASONS

33. Mr Halliday made submissions on the appropriate and proportionate sanction. The Committee received advice from the Legal Adviser and in determining the appropriate and proportionate sanction considered the least restrictive sanctions first before moving onto the more serious ones.
34. The Committee considered what sanction, if any, to impose in the light of its findings, having regard to ACCA's Guidance for Disciplinary Sanctions (2024). It first sought to identify aggravating and mitigating factors.
35. Mr Dhurumsing had no previous disciplinary findings against him. That was a mitigating factor, although not a strong one given his status as an ACCA student of less than five years standing. It also took account of it being an isolated incident, that there had been admissions following the examination and his previous good character. In the Committee's view there was limited mitigation.
36. The Committee next considered whether there were any aggravating factors. It found that the conduct was pre-planned and there was an attempt to undermine the validity and integrity of the examination process. It also found that Mr Dhurumsing intended to and would have used the notes if the right questions had come up in the examination. In addition, it found that Mr Dhurumsing lacked insight into his dishonest conduct and there was no evidence of remorse into what the Committee considered to be very serious breaches. In addition, there had been a failure to co-operate with the investigation.
37. The Committee took into account that the dishonesty was a one off over a short period of time. It took into account section E2 of the ACCA Guidance for Disciplinary Sanctions regarding findings of dishonesty.
38. The Committee considered that it would be wholly insufficient to take no further action or impose an admonishment. Neither of those sanctions would reflect

the seriousness of the conduct. It noted that there was no evidence of insight or an understanding of the seriousness of the conduct or on the impact of the conduct on the reputation of the profession.

39. In respect of a reprimand the Committee considered the dishonest conduct to be serious and not minor. Given the lack of insight the Committee considered that a severe reprimand was not a sufficient sanction as there was a continuing risk to public confidence and the risk to validity of the ACCA examination process.
40. The Committee considered the factors listed at C4.1 in the guidance. It noted that in addition to showing no insight or remorse there was no reflection. It took into account the importance of protecting the integrity of the profession's examinations and therefore determined that the only proportionate sanction was to direct that Mr Dhurumsing be removed from the Student Register.

COSTS AND REASONS

41. Mr Halliday applied for costs totalling £5,665.50. He acknowledged that this was based on an estimated hearing time of a full day whereas the actual time was less. He invited the Committee to make an appropriate reduction.
42. The Committee was satisfied that the proceedings had been properly brought and that ACCA was entitled in principle to its costs. The Committee also recognised that it needed to consider the principle that the majority of those paying ACCA's fees should not be required to subsidise the minority who, through their own misconduct, have found themselves subject to disciplinary proceedings. The Committee considered that the time spent, and the sums claimed were reasonable. It was appropriate to make a reduction for the fact that the hearing would last for less time than estimated. That would reduce the reasonable costs to £4,743.
43. There was no information before the Committee about Mr Dhurumsing's means or personal circumstances. The Committee determined that there was no basis to depart from the standard position that the reasonable costs of the ACCA should be paid by the member. The Committee directed that Mr Dhurumsing pay £4,743 towards ACCA's costs.

IMMEDIATE ORDER

44. The Committee considered whether Mr Dhurumsing be removed pending the expiry of the Appeal period. It determined that it was necessary to impose an immediate order as there was an identified risk to the public and it would prevent him from taking examinations during the appeal period.

ORDER

45. The Committee ordered as follows:
- (a) Mr Dhurumsing shall be removed from the Student Register.
 - (b) Mr Dhurumsing shall make a contribution to ACCA's costs of £4,743.

Mr David Tyme
Chair
06 August 2024