

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Mohammed Asif A

Heard on: Thursday, 15 August 2024

Location: Remotely by MS Teams

Committee: Mr Tom Hayhoe (Chairman)
Mr Abdul Samad (Accountant)
Ms Samantha Lipkowska (Lay)

Legal Adviser: Mr Alastair McFarlane

Persons present

and Capacity: Ms Michelle Terry (ACCA Case Presenter)
Miss Mary Okunowo (Hearings Officer)
Mr Asif A (Student Member) for part of the hearing only.

Outcome: Removal from the Student Register.

Costs: £6,537.50

1. ACCA was represented by Ms Terry. Mr Asif A attended but was not represented. The Committee had before it a bundle of papers, numbered pages 1 – 126, a service bundle numbered pages 1 - 15 and a copy of the video recording of the exam.

SERVICE

2. Having considered the service bundle, and the Notice of Hearing the Committee was satisfied that notice of the hearing was served in accordance with the Complaints and Disciplinary Regulations 2014 (amended 01 January 2020) (“CDR”).

APPLICATION TO AMEND ALLEGATIONS

3. ACCA applied to amend the allegations pursuant to CDR 10(5) as follows with the highlighted parts being the ones proposed to be removed and the red wording being the proposed the new wording:
 1. *On 07 December 2022, Mr Mohammed Asif A (“Mr Asif A”), an ACCA student, during a remotely invigilated Performance Management (PM) examination, was in possession of: used*
 - (a) *An unauthorised item namely a mobile phone, contrary to Examination Regulations, 5(a);*
 - (b) *Used the unauthorised item at 1(a) above to gain an unfair advantage.*
 - (c) *Mr Mohammed Asif A’s conduct in respect of 1(a) and (b) above:*
 - (i) *Was dishonest, in that he intended and attempted to gain an unfair advantage in the exam; in the alternative*
 - (ii) *Failed to demonstrate Integrity*
 - (d) *By reason of his conduct, Mr Mohammed Asif A is:*
 - (i) *Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the matters set out at 1(a) to 1(d) c) above; or*
 - (ii) *Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of 1(a) above.*

4. Ms Terry contended that the amendments were essentially typographical changes designed to reflect more accurately the Exam Regulations. The proposed amendments did not alter the operation of Exam Regulation 6(b). Mr Asif A did not object to the amendments.
5. The Committee accepted the advice of the Legal Adviser. It determined that the amendments could be made without injustice and did not prejudice Mr Asif A in the conduct of his defence. In fact, the amendment substituting “use” for “possession” made the case harder for ACCA.

APPLICATION TO HOLD PART OF THE HEARING IN PRIVATE

6. Ms Terry submitted that part of the hearing should be held in private under CDR 11 as Mr Asif A refers to personal matters. Mr Asif A did not object to this course.
7. The Committee accepted the advice of the Legal Adviser. It determined that the circumstances of matters of Mr Asif A’s personal circumstances should be held in private if and when they arise and outweighed the public interest for those parts of the hearing being in public.

ALLEGATIONS

1. *On 07 December 2022, Mr Mohammed Asif A (“Mr Asif A”), an ACCA student, during a remotely invigilated Performance Management (PM) examination, used:*
 - (a) *An unauthorised item namely a mobile phone, contrary to Examination Regulations, 5(a);*
 - (b) *Used the unauthorised item at 1(a) above to gain an unfair advantage.*
 - (c) *Mr Mohammed Asif A’s conduct in respect of 1(a) and (b) above:*

- (i) *Was dishonest, in that he intended to gain an unfair advantage in the exam; in the alternative*
 - (ii) *Failed to demonstrate Integrity*
- (d) *By reason of his conduct, Mr Mohammed Asif A is:*
- (i) *Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the matters set out at 1(a) to 1(c) above; or*
 - (ii) *Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of 1(a) above.*

DEPARTURE OF MR ASIF A AND DECISION TO PROCEED IN ABSENCE

8. During Ms Terry's opening of ACCA's case, and after Mr Asif A had made an admission to Allegation 1 a) and denials to the other allegations, Mr Asif A lost connection with the hearing. The Hearings Officer made repeated attempts by telephone and by email to contact Mr Asif A, who indicated that the battery of the phone by which he was connecting with the hearing was running low and he was content for the hearing to be concluded in his absence or postponed. Considerable time was spent by the Hearings Officer, at the direction of the Committee, seeking to re-establish Mr Asif A's engagement, culminating in an email sent to Mr Asif A in which he was specifically asked whether he wanted the hearing to conclude without him today or whether he would attend and participate if the hearing was rescheduled to another date. He was further advised that it was in his interest to attend the hearing and give his version of events. He was also asked why he was not able to continue to participate in the hearing today. Mr Asif A's email response was:

"pls proceed without me, my part is done maaam"

9. The Committee heard the submissions of Ms Terry, who invited it to proceed in Mr Asif A's absence and it accepted advice of the Legal Adviser.
10. The Committee noted that Mr Asif A had engaged throughout the process and given his written account of his actions, had attended this morning and engaged

with the hearing. Nonetheless, it was satisfied given the repeated communications with the Hearings Officer that Mr Asif A had clearly indicated that now he wished the committee to proceed in his absence. The Committee specifically considered in these unusual circumstances whether it was fair to do so or whether to adjourn the case in the hope of his re-engagement. The Committee was satisfied in all the circumstances that re-engagement was unlikely. The Committee bore in mind the prime importance of fairness to Mr Asif A. It balanced against this its duty to ensure the expeditious discharge of its regulatory function and Mr Asif A's clearly expressed wish for the matter to proceed in his absence. Given that it had Mr Asif A's written account, it concluded that it was just and appropriate to continue with this case in the absence of Mr Asif A.

BACKGROUND

11. Mr Asif A became an ACCA student on 05 December 2018.
12. On 07 December 2022, Mr Asif A sat his Performance Management ("PM") exam remotely. Suspicious behaviour was noted by the Proctor – the Remote Invigilator. A review of the video footage from the exam shows that Mr Asif A was seen in possession of an item which can be seen reflected in his glasses and resembled a smartphone or other mobile device.
13. ACCA contends that Mr Asif A has breached the Examination Guidelines as he had on or about his person, an unauthorised item, namely a mobile phone - an electronic device, contrary to Examination Regulations, 5(a).
14. An SCRS incident form was completed by the Proctor who stated that the: "*candidate is using mobile phone during exam.*" A tick is placed in the box confirming that the Proctor believed that there is evidence of cheating during the exam. The Proctor has recorded that the student was found in possession of unauthorised materials / items and was asked to hold up to the camera the unauthorised materials / items so they could be examined and that the Proctor had a screenshot of the candidate using the mobile phone.

15. ACCA relied on the following as key incidents from the video footage, where Mr Asif A appears to be scrolling through the screen of a smartphone / mobile device:

- 1:35:25 Object resembling a Smartphone can be seen reflected – candidate's fingers can be seen moving on this.
- 1:40:54 Object resembling a Smartphone can be seen on screen. Candidate can be seen scrolling through this. Candidate's lips continue to move throughout as if he is speaking aloud or subvocalising, though there is no discernible sound on the soundtrack.
- 1:42:23 reflection of smartphone in Candidates' glasses
- 1:42:32 ditto
- 1:42:37 ditto
- 1:42:38 ditto
- 1:45:55 ditto
- 1:46:00. ditto

- 1:46:01 – 1:50:00 approximately. Candidate can be seen thumbing through information on what appears to be a mobile phone, reflected in glasses

- 1:47:22 Device is turned horizontally – he continues scrolling apparently using his thumb
- 1:47:58 – 1:48:55 Device is returned to the vertical position again
- 1:50:16 Candidate reaches off screen. When he is back in view, phone/device can again be seen reflected in glasses

- 1:50:42 looks off to his right again

Corresponds with Chat Log extract (see below) 12-07-22, 07:33:59 (Proctor):
pick up your phone

1:50:54 – 1:50:59 Candidate holds what appears to be a second phone to his ear, for conversation with proctor as noted in Activity Log (and phone call transcript)

- 1:51:03 [Candidate] yeah yeah

- 1:51:11 [Candidate] yeah you called me... [etc]
 - 1:51:50 Candidate performs a desk pan showing calculator and ID card
1:52:02
 - 1:53:05 Candidate moves ID card as requested by proctor during phone call
 - 1:53:36 Candidate shows phone
 - 1:53:41 Candidate throws phone away onto bed as requested by proctor during phone call
 - 1:54:10 Candidate appears to continue with exam
 - 2:00:21 - 2:01:29 Further reflections in the candidate's glasses – unclear if this is still the earlier device
 - 2:10:18 Video terminates
16. The Chat log between the Proctor and Mr Asif A indicates that Mr Asif A was asked to *"Please put your phone on silent mode and out of your arms' reach."* This instruction was given to him by the Proctor once the greeting process was complete.
17. At approximately timestamp 1:47:00 into the exam video footage, the Proctor stated in the Chat log, *"pick up your phone."* At approximately 1:52:13, Mr Asif A can be heard in conversation with the Proctor. The Proctor tells Mr Asif A that they have seen a phone reflected in his glasses. Mr Asif A responds stating, *"I think it is the screen on this [referring to the mobile phone he is speaking on] and I took the phone when I got your call."*
18. At 07:36:56 on the Activity log corresponds to approximately 1:50:42 on the video footage, the Phone log transcript is as follows:

'Candidate (C): Hello?

Proctor (P): Hello – this is your proctor, . I can see you were using yourphone... I have a screenshot of your phone reflecting in your specs

C: That was the screen one

P: No no no I am not a fool.... Show me your workstation on livecam

C: Sure sure sure... can you see? P: Show me the right.

C: Can you see?

P: But you were using your phone. I know

C: I think it is the screen on this and I took the phone when I got your call

P: No no no I am not a fool

C: You can check once more Supervisor

(S): Hello, can you show your workstation? I know you've done it once but you can do it again

C: Can I see it? And that's the calculator

S: That's all fine.... Can you keep your ID card away from you? Keep it behind you on the bed on wherever. And as for the phone, – keep it in silent mode and keep it on the bed behind you and make sure the camera records you doing this....'

ACCA'S SUBMISSIONS

19. ACCA submitted that the allegations are capable of proof by the documentary evidence in the bundle, and the video footage of Mr Asif A's exam.
20. ACCA submitted that Mr Asif A engaged in improper conduct designed to assist him in his exam attempt in that he used a mobile device which was in his possession in order to access material to assist him with his examination. It contended that the reflection in his glasses was a mobile phone under the table and that Mr Asif A could be seen scrolling on the mobile phone.
21. ACCA also submitted that Mr Asif A's conduct in relation to using a mobile device was a breach of Examination Regulation 5(a).
22. ACCA submitted that the conduct set out at Allegation 1 a) and b) amounted to dishonesty because Mr Asif A knew that he was not permitted to use an unauthorised item, and that he intended to gain an unfair advantage in that exam. In the alternative ACCA indicated that the conduct amounted to a lack of integrity.
23. ACCA contended that the conduct reached the threshold for misconduct or in the alternative rendered him liable to disciplinary action.

MR ASIF A'S SUBMISSIONS

24. Mr Asif A denied any wrongdoing. In effect, in his written responses, he contended that the device seen on the video recording reflected in his glasses was his calculator and that he only used his mobile phone when speaking to the Proctor and that in addition he had encountered a technical issue during the exam and was waiting for a telephone call from the technical department.
25. On 01 March 2023, ACCA wrote to Mr Asif A seeking his response to questions regarding the incident that took place in his exam. On 14 March 2023, Mr Asif A provided his response to ACCA regarding his conduct in the exam. He stated:

"thier was a calculator and id proof on the table i was looking at that its too the calculator i.was using i was working with the calculator its the glacing buttons on the calculator since the light is directly.reflecting of.system some specific time.i had faced with technical.issues in the system which am not able toove the curser, maybe i was waiting for the call.from the twchnical team.i am.not remebering correcrly. i have no evidence withe me, since i have not done any malpractices ,i didn't think about catching some evidence of tech issues.

i have read and gone through all the regulations prior exam.

i have not taken or done sharing questions pictures and all such.as u can see in the exam footage.and i donot want do such things,i have got besy tutors and practice time and referemce for the exam.performance. yea i have recieved call and didnt noticed u til.they give me mesg on the screen to.pickup.the phone. they told.something reflected in my specs. and i said may the reflection of ligjt from the screen to.calculator or.somthing ,am not remembering

i have not done any coversiations otherthan my proctor.

i was having a [REDACTED] and sudden pickup of my phone when i will.be getting a call from proctor.

so i.just kept the.phone not much far,but u can.see when i.picked up.the phone also when the tech issue occured i was worried andkept the phn in my hand waitng for the call.i was worried i tried to access the proctor i am.nor able to scroll my windoew is stuck. bit maybe that time too its recorded i hereby attach evidence of the [REDACTED] which i will be able.to.proove i have not done anything or any malpractice or etc intentionally. due to my [REDACTED] issue

i have kept the phn in reach to attend call.i was tensed at that time whay to do. also i was [REDACTED].

i hav atteched my [REDACTED] picture and the evidence of the [REDACTED] and also u cane see in the footage tje [REDACTED] (sic).”

DECISION ON ALLEGATIONS AND REASONS

26. The Committee accepted the advice of the Legal Adviser.
27. The Committee heard that there had been no previous findings against Mr Asif A and 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

28. The Committee carefully considered all the documentary evidence it had received, including Mr Asif A’s denials in his written responses to ACCA, as well as the submissions of Ms Terry 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 a)

1. ***On 07 December 2022, Mr Mohammed Asif A (‘Mr Asif A’), an ACCA student, during a remotely invigilated Performance Management (PM) examination, used:***

- (a) An unauthorised item namely a mobile phone, contrary to Examination Regulations, 5(a);***

29. The Committee noted Mr Asif A admitted this allegation and considered that his admission was not equivocal. However, it considered it appropriate to also look to ACCA’s evidence as to whether this allegation was established.

30. The Committee had regard to the video footage and still images taken from it and was satisfied that ACCA had established that there appeared to be one authorised mobile phone that Mr Asif A had to communicate with the Proctor, but that there was another mobile phone that Mr Asif A had under his desk that was reflected in his glasses. The Committee noted that the photograph showed that the device was being used sideways at one point under the table. It was clear to the Committee that this was another screen and it rejected as implausible Mr Asif A's assertion that it was his calculator. The Committee was satisfied this was an unauthorised mobile phone and that the evidence established that Mr Asif A was using the mobile phone operating it with his thumbs. It was satisfied that Exam Regulation 5a prohibiting the use of an unauthorised item was breached. Accordingly, the Committee was satisfied that Allegation 1 a) was proved.

(b) Used the unauthorised item at 1(a) above to gain an unfair advantage.

31. The Committee was satisfied that the evidence showed Mr Asif A scrolling through his phone under the table and that under Exam Regulation 6(b) there was a burden on him to prove that he did not use the phone to gain an unfair advantage. The Committee carefully considered Mr Asif A's representations but was satisfied that he had not rebutted this presumption and not established that he had not intended to use the unauthorised item to gain an unfair advantage. Accordingly, the Committee was satisfied that Allegation 1 b) was proved.

(c) Mr Mohammed Asif A's conduct in respect of 1(a) and (b) above:

(i) Was dishonest, in that he intended to gain an unfair advantage in the exam; in the alternative

32. The Committee specifically considered Mr Asif A's likely state of mind. It was satisfied on the evidence Mr Asif A was using the second phone to cheat. He had accepted to the Proctor that he had read the rules and therefore knew that the mobile phone was an unauthorised device. The Committee was satisfied that the use of this phone, covertly hidden from the Proctor's view,

was not accidental and was intentional. A likely intention was to assist himself. It was satisfied that he intended to gain an unfair advantage.

33. It was satisfied that this state of mind would be considered dishonest by ordinary decent people and therefore Allegation 1 c) i) was proved. The Committee did not therefore consider the alternative of allegation 1 c) ii). The Committee was satisfied that there was no innocent explanation for the use of the mobile phone and that his actions were dishonest.

(d) By reason of his conduct, Mr Mohammed Asif A is:

- (i) Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the matters set out at 1(a) to 1(c) above; or**
- (ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of 1(a) above.**

34. The Committee next asked itself whether the proven conduct amounted to misconduct.

35. 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 Asif A's actions brought discredit on him, the Association and the accountancy profession. It was satisfied that both the dishonest use of a mobile phone with the intention of cheating in a professional exam to assist himself 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.

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

SANCTIONS AND REASONS

37. 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.
38. 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.
39. The Committee identified the following mitigating factors:
- Mr Asif A was of previous good character with no previous disciplinary record
 - Until part way through today he had fully cooperated with ACCA
40. The Committee identified the following aggravating factors:
- No evidence of insight or remorse
 - This was pre-planned, deliberate and repeated dishonesty
 - The conduct breached the trust placed in examinees undertaking professional exams remotely
 - Potential damage to the examination system
 - Potential to undermine the reputation of the profession.
41. Given the Committee's view of the seriousness of Mr Asif A'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 Asif A 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

42. ACCA claimed costs of £6,537.50 and provided a detailed schedule of costs. It noted Mr Asif A had 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 reasonably incurred. The Committee concluded that the sum of £6,537.50 was appropriate and proportionate. Accordingly, it ordered that Mr Asif A pay ACCA's costs in the amount of £6,537.50.

EFFECTIVE DATE OF ORDER

43. The Committee was not persuaded that the ground for imposing an immediate order was made out.

Tom Hayhoe
Chair
15 August 2024