

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Muhammad Kinzer Rahman Mir

Heard on: Thursday, 19 December 2024

Location: Remote via Microsoft Teams

Committee: Mr Andrew Gell (Chair)
Mr Ryan Moore (Accountant)
Ms Samantha Lipkowska (Lay)

Legal Adviser: Mr Robin Havard (Legal Adviser)

**Persons present
and capacity:** Mr Ben Jowett (ACCA Case Presenter)
Miss Mary Okunowo (Hearings Officer)

Summary: Allegations 1(a), (b), 2, 3(a), (b), (c) & 4(a) proved.

Sanction: Removed from student register.

Costs: £6,500.00

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PRELIMINARY APPLICATIONS

SERVICE OF PAPERS

1. The Committee had considered the following documents: a hearing bundle (pages 1 to 166), a video recording of the exam session on 05 February 2021; a file note re handshakes (page 1), and a service bundle (pages 1 to 24). The Committee had also considered legal advice which it had accepted.
2. The Committee had read the letter dated 21 November 2024 containing the Notice of Proceedings, sent on the same day by ACCA by email to Mr Mir. It had noted the subsequent emails sent to Mr Mir with the necessary link and password to enable Mr Mir 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 his 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 emails and the documents to which Mr Mir had access also contained the necessary information in accordance with CDR10.
4. Consequently, the Committee decided that there had been effective service of proceedings on Mr Mir in accordance with CDR.

PROCEEDING IN ABSENCE

5. On 06 December 2024, in the absence of any response from Mr Mir to the email of 21 November 2024, ACCA sent an email to Mr Mir at the registered email address asking him to indicate whether he intended to attend the hearing or whether he was content for the hearing to proceed in his absence.
6. The email reminded him of the date of hearing and of his ability to join the hearing either by telephone or video link. It also contained a request for Mr Mir to indicate whether he would need the assistance of an interpreter. If so, ACCA confirmed that an interpreter would be provided at ACCA's expense. The email had been delivered successfully. There was no response.

7. On 10 December 2024, ACCA sent a further email to Mr Mir, which was effectively in the same terms as its email of 06 December 2024, asking him to confirm if he was unable to attend, that he was content for the hearing to proceed in his absence. There was no response.
8. On 16 December 2024, ACCA attempted to call Mr Mir on the number registered with ACCA on two occasions but there was no response nor was there the option to leave a message.
9. On 16 December 2024, having tried to contact Mr Mir by phone, ACCA sent an email to Mr Mir, telling him of the unsuccessful attempts to contact him by phone, and repeating the information provided in the email of 06 December 2024. There was no response.
10. On 17 December 2024, ACCA tried once again to phone Mr Mir on two occasions on the number registered with ACCA but there was no answer and, again, there was no facility to leave a message.
11. On 17 December 2024, ACCA sent a further email to Mr Mir in the same terms as the email of the day before.
12. On 18 December 2024, ACCA sent an email to Mr Mir containing the link to enable Mr Mir to join the hearing via Microsoft Teams. There had been no response.
13. The Committee was satisfied that ACCA had done all that it could reasonably be expected to do to engage Mr Mir in the hearing. However, the Committee concluded that Mr Mir was aware of the hearing date but that he had no intention of participating in the hearing, nor had he requested an adjournment.
14. The Committee concluded that Mr Mir had voluntarily absented himself from the hearing, which he could have joined by telephone or video link. He had therefore waived his right to attend. In reaching this conclusion, the Committee also took into account the failure on the part of Mr Mir to respond to any of the correspondence that formed the substance of allegation 3.
15. 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.

16. Finally, the Committee considered that it was in a position to reach proper findings of fact on the evidence presented to it by ACCA.
17. The Committee ordered that the hearing should proceed in the absence of Mr Mir.

ALLEGATIONS

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

1. On 05 February 2021, contrary to Examination Regulation 2, failed to comply with instructions issued by:
 - (a) ACCA personnel (as per the Student Information Sheet) before a scheduled FMA Management Accounting exam (the 'Exam'), in that he failed to ensure he was in a room with no-one else around him;
 - (b) The exam proctor during the Exam, in that he failed to adequately follow an instruction to keep his eyes on his computer screen.
2. On 05 February 2021, contrary to Examination Regulations 4 and/or 5 possessed, notes or other materials, not permitted in accordance with those regulations being 'unauthorised materials'.
3. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), failed to co-operate with the investigation of a complaint, in that he did not respond fully or adequately to any or all of ACCA's correspondence sent on:
 - (a) 22 September 2021;
 - (b) 30 September 2021;
 - (c) 07 October 2021.
4. By reason of his conduct, Mr Mir 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).

DECISION ON FACTS, ALLEGATIONS AND REASONS

18. In reaching its findings in respect of allegations 1(a), 1(b) and 2, the Committee relied upon the email correspondence and documents contained in ACCA's bundle and noted the Incident Report provided by the proctor (i.e. a remote exam invigilator) prepared following the exam. It had also viewed the video footage from the video taken on 05 February 2021. The Committee had taken account of the submissions of Mr Jowett. The Committee also listened to legal advice, which it accepted.

Allegation 1(a)

19. On 05 November 2019, ACCA registered Mr Mir as a student. As such, he is, and was throughout the material time, bound by ACCA's Bye-laws and Regulations, including the Examination Regulations.

20. 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."

21. Examination Regulation 2 provides as follows:

"You are required to comply in all respects with any instructions issued by the exam supervisor/s, invigilator/s, proctor/s, and any ACCA personnel before, during and at the conclusion of an exam. Failure to comply with these instructions may result in the termination of your examination and potential disciplinary procedures being invoked."

22. The following is an extract from the Examination Guidelines December 2020

"Before the Examination

Proctored Exam

The exam can be attempted at home or in your office. Wherever you choose to sit the exam, you should be in a walled room, with a closed door and without distractions.

Before the examination start, you must ensure you follow the instructions below:

•Ensure you are not disturbed by anyone.”

23. In the ACCA Information Sheet for On-Demand CBE Students sitting exams at home during the material time, it specified that the person must take the exam, *“in a private, well-lit room with no-one else around you.”*
24. On 05 February 2021, Mr Mir was due to take an on-demand FMA Management Accounting examination (the 'Exam') remotely.
25. Before the commencement of the exam, Mr Mir acknowledged that he had read and understood the Information Sheet for On-Demand CBE Students sitting exams at home and the On-Demand CBE Announcements.
26. The Exam started but was terminated part way through the exam by the proctors. This was because suspicious behaviour by Mr Mir had been observed.
27. Having considered carefully the video footage, the Committee was satisfied that the summary provided by ACCA in its report, and the observations of the proctor as outlined in his Incident Report, were accurate.
28. Whilst the Committee relied on the totality of the report and video footage, the proctor's Incident Report, filed on the day of the Exam, noted, for example, that:
 - ‘During the session the test taker was observed looking off-screen at 1:45:00, 1:53:00 of the video recording...’*
 - ‘Upon request for a camera pan the test taker continued to take notes of their exam and at the top left of the camera a person could be seen leaning their head into frame.... This behaviour is evident at 1:58:00 of the recording’.*
29. An investigation was commenced. Documents and video footage relating to the Exam were obtained. The Committee was satisfied that the video footage

- obtained suggested or showed the presence of additional people in the room where the Exam was taking place, both prior to and during the Exam.
30. The Committee was able to hear whispered conversations going on between Mr Mir and a third party who could then be seen in the frame at 0:28:08, which was before the exam commenced.
 31. Following the commencement of the exam, further whispering between Mr Mir and third parties take place on a number of occasions. There is also the sound of a door opening and closing. At 1:54:13 – 1:54:15 a third party can be seen just in frame to the right of Mr Mir.
 32. In the Proctor Incident Report, the Committee noted that, "*Upon request for a camera pan the test taker continued to take notes of their exam at the top left of the camera a person could be seen leaning their head into frame. The exam was ended...*".
 33. The Committee was also referred by Mr Jowett to further conversations taking place immediately following the termination of the exam, to include Mr Mir addressing a third party regarding talking loudly and taking pictures.
 34. In subsequent communications, Mr Mir referred to a "laptop technician" and a child being present in the room. First, this represented an acceptance on the part of Mr Mir that third parties were present. Secondly, there was no evidence to suggest that the persons present were indeed a laptop technician or a child.
 35. On this basis, the Committee found the facts of allegation 1(a) proved.

Allegation 1(b)

36. At Chat Log 5:40 a.m. at approximately 1:26:30 on the video, the proctor types in the Chat Log '*It appears you are looking off-screen. Could you please keep your eyes on the exam and perform another camera pan so I can see all four walls of the room and the surface you are working on?*'
37. Mr Mir then performs a room pan and shows his materials to the proctor. He appears to continue with the Exam from approximately 1:30:00.
38. However, as particularised in the report, and despite several instructions from the proctor, between 1:31:31 and 1:48:19, Mr Mir looks off screen on multiple

occasions. Indeed, at 1:48:13, he looks up when it sounds as if someone has just entered the room.

39. Based on these findings of fact, the Committee found allegation 1(b) proved.

Allegation 2

40. Examination Regulations 4 and 5 provide as follows:

“4. You are not permitted during the exam to possess, use or attempt to use any books, notes or other materials except those expressly permitted in the guidelines below. These are known as ‘unauthorised materials’.

5. You are not allowed to possess, use, or intend/attempt to use, any unauthorised materials while the exam is in progress (whether at your desk or otherwise).”

41. As explained above, Mr Mir had confirmed prior to the start of the exam that he was familiar with the Examination Guidelines which would include instruction regarding what materials he was entitled to bring into the examination.

42. The Guidelines state as follows:

“Scratch paper (2 sheets permitted and must be destroyed on screen before the end of your exam)”

43. Later in the same document, it states:

“2. You may use up to 2 sheets of blank paper upon which to do rough workings. This must be destroyed immediately following conclusion of your exam.”

44. Prior to the commencement of the exam at 1:19:00, Mr Mir showed to the camera his calculator and scratch paper. Whilst three pieces of paper can be seen, he only showed one piece. Other papers can be seen on the cushion in front of him and, at 1:14:10, they can be seen on the floor adjacent to his desk.

45. At 1:28:36, Mr Mir carried out a camera pan of the room in which he was taking the exam, showing the proctor his exam materials.

46. The Committee found that, at 1:28:43, the reverse of Mr Mir's papers showed additional blue writing. There was also some typed content observed.
47. The Committee was satisfied that, in breach of Exam Regulations 4 and 5 and the Guidance, Mr Mir had in his possession unauthorised materials.
48. On this basis, the Committee found allegation 2 proved.

Allegation 3

49. On 04 May 2021, ACCA wrote by email to Mr Mir, to which was attached a letter asking him a series of questions as part of its investigation. Mr Mir replied on 01 June 2021.
50. On 07 June 2021, ACCA sent a second email attaching a letter which asked several supplementary questions to which Mr Mir provided partial responses on 16 June 2021.
51. Having seen Mr Mir's details on ACCA's register, the Committee was satisfied that the emails of 04 May 2021, 07 June 2021, and all the following emails were sent to Mr Mir at an email address he had registered with ACCA. The email address had not changed throughout the course of the investigation. None of the emails had been returned or bounced back into the case management system.

Allegation 3(a)

52. On 22 September 2021, on receipt of a translation from language agency Ubiquis, some further questions were sent to Mr Mir in a letter attached to an email. In particular, these referred to:
 - The presence of one or more third parties and the conversations taking place prior to, during, and following the exam;
 - The issue of Mr Mir speaking to the third parties about taking photographs;
 - The unpermitted notes which closer viewing had revealed at 1:28:42.

53. ACCA's case management system recorded, and, on the balance of probabilities, the Committee found, that Mr Mir opened that email on 24 September 2024. Mr Mir was required to respond by 29 September 2021 but he failed to do so.

Allegation 3(b)

54. On 30 September 2021 Mr Mir was sent a further email reminding him of his duty to co-operate fully and to respond to the letter of 22 September 2021, which was attached. Indeed, in the email, ACCA set out in full the requirements of CDR3(1) and that, if he failed to cooperate and respond, he may be liable to disciplinary action.
55. ACCA's case management system showed, and the Committee found, on the balance of probabilities, that Mr Mir opened this email on 30 September 2024.
56. Mr Mir was required to respond by 06 October 2021. He failed to do so.

Allegation 3(c)

57. On 07 October 2021, as Mr Mir had not responded, he was sent a second and final reminder, requiring him to respond by 14 October 2021. Once again, the letter of 22 September 2021 was attached.
58. On 08 October 2021, Mr Mir responded but he failed to answer the questions put to him by ACCA in its correspondence. ACCA wrote back to him on 08 October 2021 to acknowledge his response, but indicated that he had not replied substantively to the questions from ACCA. He was encouraged to respond by the deadline of 14 October 2021. No further response was received.
59. The Committee was satisfied that the emails of 22 September 2021, 30 September 2021 and 07 October 2021 had been sent to the correct email address of Mr Mir. Indeed, it was the email address that he had provided to ACCA to be included on the register when he became a student member, and it was this email address he used when responding on 04 May 2021, 07 June 2021 and 07 October 2021, and he had responded to the email of 07 October 2021.
60. The Committee was satisfied, on the balance of probabilities, that the emails had been received by Mr Mir and that he had failed to respond at all within the

required timescale to the emails of 22 and 30 September 2021. He had also failed to reply fully to the email of 07 October 2021.

61. The Committee was satisfied that this amounted to a failure to cooperate with ACCA in the course of its investigation.
62. On this basis, the Committee found allegation 3 proved.

Allegation 4(a)

63. Taking account of its findings in respect of allegations 1(a), 1(b) and 2 regarding Mr Mir's conduct prior to, and during, the examination, the Committee was satisfied that he was guilty of misconduct. His behaviour represented a number of breaches of the Exam Regulations. In the Committee's judgement, this brought discredit to Mr Mir, the Association and the accountancy profession.
64. In respect of allegation 3, the Committee had found that, despite ACCA providing a number of reminders of his obligation to cooperate and warnings of potential consequences of his failure to do so, Mr Mir had failed persistently to cooperate with ACCA and to respond, either fully or at all, to his regulator's correspondence.
65. The need for members, including student members, to engage and cooperate with their regulator was fundamental. A failure by members to do so meant that ACCA's ability to regulate its members in order to: ensure proper standards of conduct; protect the public, and to maintain its reputation was seriously compromised.
66. The Committee found that the failure of Mr Mir to cooperate with his regulator could be described as deplorable. It amounted to misconduct in that such failure brought discredit to himself, ACCA and the accountancy profession.
67. Therefore, the Committee found allegation 4(a) proved.

Allegation 4(b)

68. On the basis that this allegation was pleaded in the alternative to allegation 4(a), the Committee made no finding in respect of it.

SANCTION AND REASONS

69. 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 Jowett, and legal advice from the Legal Adviser which it accepted.
70. 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.
71. 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.
72. The Committee considered whether any mitigating or aggravating factors featured in this case.
73. The Committee accepted that there were no previous findings against Mr Mir. However, the Committee took into consideration the fact that, at the time the exam took place, Mr Mir had only been a student member for approximately 13 months.
74. The Committee had no information regarding the personal circumstances of Mr Mir, nor had it been provided with any testimonials or references as to Mr Mir's character. Indeed, there had been no engagement by Mr Mir in the course of the proceedings.
75. As a consequence, the Committee was not satisfied that Mr Mir had shown any insight into the seriousness of his conduct, and he had not expressed any remorse.
76. The Committee had found Mr Mir to have acted improperly during the course of an exam and that he had failed to engage with ACCA during its investigation, both of which the Committee considered to be very serious.

77. The Committee found such serious conduct to be aggravated in the following ways.
78. As stated, Mr Mir had shown neither insight nor contrition. His lack of cooperation had also extended over a period of months and therefore, again, it could not be described as an isolated incident.
79. 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.
80. 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. Indeed, the Committee noted that such a sanction may be appropriate if there was evidence of Mr Mir's understanding and appreciation of the conduct found proved. No such evidence had been presented to the Committee.
81. 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.
82. Mr Mir had also failed persistently to cooperate with his regulator, ACCA, in respect of an investigation of potentially serious allegations. His conduct during the exam and his lack of engagement in relation to the investigation of such conduct represented conduct which was fundamentally incompatible with being a student member of ACCA. His lack of engagement and his failure to show any insight or contrition for his lack of cooperation, led the Committee to conclude that, currently, there was no guarantee that Mr Mir would behave in a manner expected of a member of ACCA.
83. The Committee had considered whether there were any reasons which were so exceptional or remarkable that it would not be necessary to remove Mr Mir from the student register but could find none.

84. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Mr Mir shall be removed from the student register.

COSTS AND REASONS

85. 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.
86. The Committee concluded that ACCA was entitled to be awarded costs against Mr Mir, all allegations having been found proved. The amount of costs for which ACCA applied was £7,009.50. The Committee did not consider that the claim was unreasonable, but the hearing had taken less time than estimated.
87. Mr Mir had not provided ACCA with any documentary evidence of his means. The Committee was satisfied that, in the correspondence sent to him, Mr Mir had been warned at the outset of the importance of providing details of his financial circumstances and of ACCA's intention to apply for costs.
88. In the absence of any information from Mr Mir, the Committee approached its assessment on the basis that he was able to pay any amount of costs awarded against him.
89. 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 £6,500.00.

EFFECTIVE DATE OF ORDER

90. The Committee had considered whether the order should have immediate effect. However, ACCA did not seek such an order and, taking account of Mr Mir's removal from the student register, the Committee did not consider that he 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.
91. 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.

Mr Andrew Gell (Chair)
19 December 2024