

HEARING

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

REASONS FOR DECISION

In the matter of:	Ms Marifat Nazarova
Heard on:	Wednesday, 12 June 2024
Location:	Virtual hearing using Microsoft Teams
Committee:	Mr Andrew Popat CBE (Chair) Ms Nimra Syeda (Accountant) Mr Andrew Skelton (Lay)
Legal Adviser:	Mr Charles Apthorp
Persons present and capacity:	Ms Michelle Terry (ACCA Case Presenter) Miss Marifat Nazarova (Student) Ms Lauren Clayton (Hearings Officer)
Summary:	Allegations 1a), b), 2a) and b) and 3a) found proved Removed from student register, order to take immediate effect.
Costs:	£8,246.50

1. The Committee heard an allegation of misconduct against Miss Marifat Nazarova, Ms Terry appeared for ACCA. Miss Nazarova was present, but not represented. The hearing was listed on the 05 April 2024 and was adjourned to the 12 June 2024 by the Committee hearing the matter on its own volition to enable Person A to attend, for the video of the examination and any other evidence to be provided.
2. The Committee were provided with the following bundles: hearing bundle [1-105], Correspondence Bundle (1-5), Service Bundle (1-7), Service bundle for the adjourned hearing (1-21) and the examination Video (3:09:23).
3. The Committee had read the papers prior to the hearing.

BRIEF BACKGROUND

4. Ms Nazarova registered as an ACCA student on the 26 October 2022. On the 09 March 2023 she took the remotely invigilated Financial Reporting (FR) Exam.
5. On the 13 March 2023 ACCA received an email from an anonymous source notifying ACCA that someone called Mari Nazar was allegedly sharing photographs of the examination questions. The email had attached to it five photographs/images of ACCA Exam questions.
6. It is accepted by Ms Terry that the video of the examination does not show an unauthorised item being used and therefore is not being relied upon by ACCA.
7. An ACCA Exam Production Technician, Person A, provided evidence that the images provided contained a partial first name and surname of an ACCA student, and the unique examination code was also visible in the images. The information was cross referenced with an ACCA database (CEC), with potential access codes and student details with ACCA's Examination Operations Service.
8. Ms Nazarova was notified of the allegations, which she denies. On the 15 March 2023 she responded by stating that the phone was in the same room but out of reach, she was alone in the room and denies sharing the information with anyone. Further, she stated she had lost internet during the examination and was not in any group which relates to ACCA.
9. Ms Nazarova faced the following allegations:

ALLEGATIONS

Allegation 1

Miss Marifat Nazarova, ACCA student;

- a) On 09 March 2023 used an unauthorised item during ACCA's Financial Reporting (FR) a remotely invigilated Exam to take photographs of one or more Exam questions, contrary to Exam Regulations 5(a) and or 12.

- b) On a date unknown thereafter caused or permitted one or more of the photographs referred to in Allegation 1(a) to be shared with a person or persons unknown, contrary to Exam Regulation 14.

Allegation 2

By reason of the matters referred to in Allegation 1 above Miss Nazarova:

- (a) was dishonest, in that the taking and retaining of the photographs of the Exam questions could potentially assist her if she had to resit the same Exam and thereby provide her with an unfair advantage and/or

- (b) was dishonest in that sharing the photographs with another or other Exam candidate sitting the same Exam could provide them with an unfair advantage, or in the alternative;

- (c) demonstrates a failure to act with integrity, or further in the alternative,

- (d) in respect of allegation 2(b) above was reckless in that she failed to have any or sufficient regard to the possibility that the sharing of the photographs of Exam questions with any other ACCA student (whether directly or indirectly) would provide them with an unfair advantage if they were intending to sit the same Exam.

Allegation 3

By reason of any or all of the matters set out at Allegation 1 and 2 above Miss Marifat Nazarova, 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) in respect of breaches of the Exam Regulations as set out in allegation 1 above.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

- 10. Ms Terry relied on the documentary evidence exhibited in the bundle and called one witness, Person A, an Exam Production Technician. They gave evidence referring to the unique access code for the examination and the images showing live content from the March 2023 Financial Reporting (FR) Examination. They also gave evidence that the specific combination of questions in the photographs was consistent with the unique combination of questions provided to a student when Ms Nazarova sat the Examination.
- 11. Ms Terry invited the Committee to conclude that these were five images from the examination sat by Ms Nazarova on the 09 March 2023 which had been shared with another party and because of the position the images were taken from the most likely explanation was Ms Nazarova had taken and distributed them.
- 12. Ms Nazarova made oral submissions in relation to the issues in this case, which were initially set out in an email that the Committee has read. She denied that she had taken the photographs and distributed them. She accepted the person seen in photographs sent anonymously in the top right was her.
- 13. She denied that she had been dishonest as alleged.
- 14. The Committee accepted the advice of the Legal Adviser, which included reference to the applicable burden and standard of proof, and the interpretation of the term misconduct.

ALLEGATIONS 1a) and b)

- 15. The Committee find Allegation 1(a) proved.
- 16. The Committee were informed that the video was not directly relevant and is not relied upon by ACCA to prove the allegations. However, it carefully considered the images

in the bundle and the written and oral evidence of Person A and the responses and oral evidence of Ms Nazarova. The Committee noted and took account of Ms Nazarova's good character in reaching its decisions.

17. The Committee notes that the relevant Exam Regulation 5(a) states that "*You are not permitted... to use in your Examination room ... any ... item with smart technology functionality or mobile phones (unless the Exam is being conducted remotely in which case it must only be used in accordance with ACCA's Exam Guidelines)*".
18. The Committee accepts ACCA's submission that electronic equipment able to take photographs was within arm's reach and it was an unauthorised item during an Exam. This is prohibited by the Examination Regulations by Regulation 5(a) and 5(b).
19. The Committee accepted the evidence of Person A regarding the unique access code for the Financial Reporting Examination, that the name of the candidate and photograph of Ms Nazarova was shown in the photographs sent anonymously on the 13 March 2023.
20. The Committee took into account the responses to the ACCA and the oral evidence of Ms Nazarova and her denial that she took the photographs and disseminated them. The Committee found that her account in this regard was not credible and attached more weight to what was shown on the photographs and the evidence of Person A.
21. The Committee find Allegation 1(b) proved.
22. The Committee having found at Allegation 1(a) that an 'unauthorised item', was present during Ms Nazarova's Financial Reporting Exam determined that this was conduct designed to assist her to gain an unfair advantage in the examination.
23. The Committee had regard to Regulation 6(b) of the ACCA Exam Regulations set out below:

6(b) "If you breach Exam regulation 5(a) and/or 5(b), or permit another person to act contrary to those Exam regulations, it will be assumed that you, and/or the other person, intended to use the 'unauthorised items' to gain an unfair advantage for you or others in the Exam and/or a future Exam. In any subsequent disciplinary proceedings, you will have to prove that you, and/or the other person, did not intend to use the 'unauthorised items' to gain an unfair advantage for you, or others, in the Exam and/or a future Exam."

24. The Committee therefore approached allegation 1(b) on the basis that having found there was a breach of Regulation 5(a) that there was a rebuttable presumption that there was an intention to use the mobile phone to gain an unfair advantage and the burden of proving that was not the case on the balance of probabilities lay upon Ms Nazarova.
25. As set out above, the Committee found Ms Nazarova's account of where the phone was positioned in the room was not credible as it plainly had been used in the examination to take the images. The Committee found that the phone was within arm's reach.
26. The Committee concluded that Ms Nazarova had not discharged the burden of proof and found allegation 1(b) proved.

ALLEGATIONS 2 a), b), c), d)

27. The Committee found allegation 2(a) proved. In reaching this finding the Committee took into account the fact Ms Nazarova was of previous good character, having no previous regulatory findings made against her. The Committee at Allegation 1(a) and (b) have previously found that Ms Nazarova had an unauthorised item, a mobile phone or electronic device, within arm's reach during the examination and that this was to gain an unfair advantage in the examination.
28. In consequence, the Committee found that Ms Nazarova was aware that the phone or electronic device was within her reach and in her view and that she intended to gain an unfair advantage in the examination. The Committee noted Ms Nazarova's evidence that she had read the examination guidance prior to starting the examination, and so would have been aware of the prohibited nature of such devices. Having established her 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 'cheating' in a professional examination and as such dishonest conduct. The Committee found that this was dishonest conduct by the standards of ordinary decent people and therefore found allegation 2(a) proved.
29. The Committee went on to consider allegation 2(b), which it found proved. It took into account that the photographs had been received within a short period of time of the Exam and the evidence from Ms Nazarova that she was the only person present during the examination. The Committee therefore concluded that it was probable that Ms Nazarova had sent the photographs to a third party as she was the only person in

possession of the photographs at the relevant time. In the Committee's view there was no other explanation, Ms Nazarova's account in this regard was not credible.

30. The Committee did not go onto consider allegations 2(c) - (d) whether there was a lack of integrity or that the conduct was reckless as these had been put as an alternative allegation if allegation 2(a) was not proved.

ALLEGATION 3

MISCONDUCT AND LIABILITY TO DISCIPLINARY ACTION

31. In relation to Allegations 1a), b) and 2a), b) the Committee considered that the presence of the mobile phone within reach of Ms Nazarova and taking images of the examination was dishonest conduct which undermined the validity of the examination process. This was in the Committee's view a serious breach of the regulations striking at the core role of the Regulator, to maintain standards and public confidence in the profession. It found that allegations 1(a) and (b) and 2(a), (b) taken together amounted to serious misconduct.
32. The Committee found misconduct proved in respect of Allegation 3(a).

SANCTION(S) AND REASONS

33. Ms Terry and Ms Nazarova 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.

ALLEGATIONS 1(a), (b) and 2(a), (b)

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 . It first sought to identify aggravating and mitigating factors.
35. Ms Nazarova had no previous disciplinary findings against her. That was a mitigating factor, although not a strong one given her status as an ACCA student of less than a year standing. It also took account of her engagement in the disciplinary hearings and her previous good character. In the Committee's view there was limited mitigation.

36. The Committee considered the aggravating factors in relation to these allegations. In the Committee's view it was an aggravating factor that there was no evidence of remorse or insight into what the Committee considered to be serious breaches. It took into account that the dishonesty was a one off over a short period of time, but it was not a spur of the moment breach, as the conduct was premediated. In addition, it was an aggravating factor that Ms Nazarova had sought to undermine the integrity of the examination process.
37. It took into account section E2 of the ACCA Guidance for Disciplinary Sanctions regarding findings of dishonesty.
38. The Committee considered that taking no further action or imposing an admonishment did not reflect the seriousness of the conduct and noted that there was no evidence of insight or early admissions.
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, the potential risk of harm and the risk to the validity of the ACCA examination process.
40. The Committee considered the factors listed at C5.1 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 Ms Nazarova be removed from the Student Register.

COSTS AND REASONS

41. Ms Terry applied for costs totalling £8,246.50.
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 not appropriate to make a reduction as the hearing had run for a full day. Therefore, the reasonable costs are assessed to be £8,246.50.

43. There was information before the Committee about Ms Nazarova's means, [PRIVATE]. She provided oral evidence of her means and stated that she was presently working as a consultant. Ms Nazarova stated [PRIVATE].
44. The Committee took account of paragraph 27 of the Guidance of Costs Orders and noted that no Statement of Financial Position had been provided and there was no documentary evidence of her means provided to ACCA and the Committee. The Committee directed that she pay £8,246.50 towards ACCA's costs.

IMMEDIATE ORDER

45. Ms Terry invited the Committee to direct that the order come into effect immediately. She submitted it was necessary to protect the public and in the public interest and referred to the findings of the Committee in support. Ms Nazarova made no submissions on this application.
46. The Committee directed that the order should come into effect immediately as it was necessary to protect the public as there was an identified risk to the validity of ACCA's Examination process.

ORDER

47. The Committee **ordered** as follows:
 - (a) Ms Marifat Nazarova shall be removed from the Student Register.
 - (b) The order is directed to come into effect immediately.
 - (c) Ms Marifat Nazarova shall make a contribution to ACCA's costs of £8,246.50.

Mr Andrew Popat CBE
Chair
12 June 2024