

HEARING

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

REASONS FOR DECISION

In the matter of: **Mr Seth Andrew Macaran Nepomuceno**

Heard on: **Wednesday, 19 June 2024**

Location: **Remote via Microsoft Teams**

Committee: **Mr Tom Hayhoe (Chair)**
 Ms Andrea White (Accountant)
 Ms Jackie Alexander (Lay)

Legal Adviser: **Mr Robin Havard**

**Persons present
and capacity:** **Mr Alex Mills (ACCA Case Presenter)**
 Ms Lauren Clayton (Hearings Officer)

Summary **Removed from the student register**

Costs: **£5,500**

PRELIMINARY APPLICATIONS

SERVICE OF PAPERS

1. The Committee had considered the following documents: a hearing bundle (pages 1 to 83); a video recording of the exam session on 09 September 2022;

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- a Tabled Additional bundle (pages 1 to 3), and a service bundle (pages 1 to 28). The Committee had also considered legal advice which it had accepted.
2. The Committee had read the letter dated 22 May 2024 containing the Notice of Proceedings, sent on the same day by ACCA by email to Mr Nepomuceno. It had noted the subsequent emails sent to Mr Nepomuceno with the necessary link and password to enable Mr Nepomuceno 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 Nepomuceno 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 Nepomuceno in accordance with the CDR.

PROCEEDING IN ABSENCE

5. On 14 June 2024, in the absence of any response from Mr Nepomuceno to the email of 22 May 2024, ACCA sent an email to Mr Nepomuceno 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. The email reminded him of the date of hearing and of his ability to join the hearing either by telephone or video link. The email had been delivered successfully. There was no response.
6. On 18 June 2024, ACCA tried to speak with Mr Nepomuceno on the phone on the number held on ACCA's register but there was no answer. ACCA left a message for him on voicemail, asking him to respond to the emails and to indicate whether he intended to attend the hearing.
7. On 18 June 2024, ACCA sent an email confirming that an attempt had been made to contact him by phone and that a message had been left for him. ACCA also provided Mr Nepomuceno with the link to enable him to join the hearing if he wished to do so.

8. On 18 June 2024, Mr Nepomuceno sent an email to ACCA apologising for not responding to the emails and phone call. He also confirmed that he would not be attending the hearing due to work commitments. In the email, he also stated, *"Since I already passed the FM paper last year, July 2023, I thought that this was already a done deal and that my records have proven that I took the exam without any misconduct."*
9. On 18 June 2024, ACCA sent a further email to Mr Nepomuceno, noting that he had stated that he would not be attending and asking him to confirm that he was content for the hearing to proceed in his absence.
10. On the same day, Mr Nepomuceno sent a one-word response, saying, "Yes".
11. The Committee was satisfied that ACCA had done all that it could reasonably be expected to do to engage Mr Nepomuceno in the hearing. The Committee concluded that Mr Nepomuceno was aware of the hearing date and had confirmed that the hearing could proceed in his absence. He had not requested an adjournment.
12. The Committee concluded that Mr Nepomuceno 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.
13. 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.
14. Finally, the Committee considered that it was in a position to reach proper findings of fact on the evidence presented to it by ACCA and the response which had been provided by Mr Nepomuceno in the course of the investigation.
15. The Committee ordered that the hearing should proceed in the absence of Mr Nepomuceno.

APPLICATION TO AMEND THE ALLEGATIONS

16. In an email dated 17 June 2024, ACCA notified Mr Nepomuceno of its intention to apply for an amendment to the allegations. There had been no response from Mr Nepomuceno.
17. Having listened to Mr Mills's application, the Committee was satisfied that the amendments sought to add a level of clarity. It also refined the allegation of dishonesty by restricting it to Allegation 1(b) which was in Mr Nepomuceno's favour.
18. ACCA continued to rely on the evidence it had served on Mr Nepomuceno on 22 May 2024. The Committee was satisfied that Mr Nepomuceno was not prejudiced by the amendments. It considered whether it would be necessary to adjourn the hearing to enable Mr Nepomuceno to respond to the application. However, on balance, the Committee concluded that it was very unlikely that the application, of itself, would lead to greater participation from Mr Nepomuceno and it therefore granted the application.

ALLEGATIONS AS AMENDED

Mr Seth Andrew Macaran Nepomuceno an ACCA student:

1. On 09 September 2022 during ACCA's Financial Management (FM) remotely invigilated exam
 - a) Failed to adhere to the Exam Guidelines, contrary to Examination Regulation 1, in that he had in his possession a mobile phone which was not out of arm's reach.
 - b) Was found to be in possession of unauthorised materials contrary to Examination Regulation 4.
2. Contrary to Regulation 3(1) of the Complaints & Disciplinary Regulations 2014(as amended), Mr Nepomuceno failed to co-operate with the investigation of a complaint, in that he did not respond to any or all of ACCA's correspondence dated:
 - a) 18 April 2023
 - b) 04 May 2023

3. With regard to the matters referred to in Allegation 1(b) above Mr Nepomuceno's conduct:
 - a) Was dishonest, in that he intended to use the unauthorised materials referred to in allegation 1 b) above to gain an unfair advantage in his exam attempt; or in the alternative;
 - b) Demonstrated a failure to act with integrity
4. By reason of any or all of the matters referred to above, Mr Nepomuceno is:
 - a) Guilty of misconduct pursuant to bye-law 8(a)(i); or in the alternative,
 - b) Liable to disciplinary action pursuant to byelaw 8(a)(iii), in respect of allegations 1 and 2 above.

DECISION ON FACTS, ALLEGATIONS AND REASONS

ALLEGATIONS 1(a) & (b)

19. In reaching its findings in respect of allegations 1(a) and (b), 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 09 September 2022. The Committee had also been assisted by Person A, who appeared as a witness for ACCA. Person A did not give any oral evidence but played sections of the video footage as requested by Mr Mills. The Committee had taken account of the submissions of Mr Mills. The Committee also listened to legal advice, which it accepted.
20. On 21 July 2021, Mr Nepomuceno became an ACCA registered student. As such, he is, and was throughout the material time, bound by the ACCA's Code of Ethics and Conduct, Bye-laws and Regulations, including the Examination Regulations.
21. The matter came to ACCA's attention in October 2022, following a referral from PearsonVue.

22. The referral included an "SCRS" form for Remotely Invigilated ("RI") exams from the online proctor of Mr Nepomuceno's Financial Management exam dated 09 September 2022 which made some observations regarding Mr Nepomuceno's conduct during the exam.
23. The form set out the following observations made by the proctor:

"candidate was using a copy of paper containing 'financial management' notes on his lap. When inquired he tried to slip the paper under his desk multiple times. Asked him for 360 scan of his workspace he kept delaying the process. Feedback voices were also coming in from the background, was a little confusing to deal with the candidate as I could hear myself through his laptop. Hung up and called him back. He was also apparently using another phone. Could see a reflection of light on his face. Asked him to show me under the desk. The piece of paper containing notes was clearly visible. Told candidate to hold up the paper in front of the webcam and show me the front and back. Candidate said it was their preparation notes and that they did not know it was placed under the desk. Called a supervisor to witness the behavior as well. Candidate was advised to contact ACCA and exam was ended. Candidate was apologizing for his behavior and claiming to have not seen the notes before starting the exam. He claimed to bend forward to drink water although his bottle was on a side table not underneath the desk.

When clear signs of misconduct were visible I tried contacting the candidate. His phone was already in his hand under the desk. He cancelled my call and tried to secretly put the phone back. Upon enquiry he tried acting like he could not understand what I was saying or that he could not hear me. I asked him to show me his workplace and he delayed that process as much as he could. All the while bending and trying to remove items from his workplace.

Candidate copying from their notes is clearly visible in the playback recording at around 1:01:35 seconds. Their face also lights up twice after that due to the use of a smart device under the table. Informed candidate that any kind of unauthorized item in their possession is a direct policy violation (followed the troubleshooting guide for script). Advised them to contact ACCA for further options available to them".

24. ACCA relied on the following key incidents observed from the video footage of Mr Nepomuceno's exam:

- At 3:12, the student leaves his desk to place an object out of reach. He returns at 3:20.
- At 3:39, the student can be seen holding an object to the camera, potentially his passport/ID. Whilst he is holding that object to the camera, he looks downwards and can be seen smiling. He appears to be smiling at something on his desk.
- At 4:45, he leaves his desk. He returns at 4:59.
- Between 5:00 and 7:00 is when we believe his exam launched.
- At 6:20-6:35, the student can intermittently be seen looking downwards at something on his desk.
- At 20:35-21:00 and 21:38-22:50, he can again be seen intermittently looking downwards at something on his desk.
- At 23:50, 23:56 and 23:59, whilst the student is looking downwards, there's a change of light on the reflection on his neck. It appeared to change as a result of something on the desk in front him, potentially a mobile phone.
- At 25:46-26:06, 26:30-26:42, 27:20-28:10, 28:30-29:26, 30:33-31:25, 33:24-36:52, 37:42-37:58, 42:33-43:29, 43:37-44:45, 45:21-46:30, 47:40-51:15, 52:43-52:58, 53:15-53:36, 54:26-56:23, 58:05-58:20, 58:50-59:15, 59:35-1:00:33, 1:01:01-1:01:27 and 1:02:56-1:04:05, the student can again be seen intermittently looking downwards at something on his desk.
- At 1:05:30 he picks up his phone from behind him. His phone appears to be within arms' reach.
- At 1:06:18, he picks his phone up again. He appears to be speaking to the proctor. Whilst speaking to the proctor he starts to lean forwards and

his face becomes only partially visible.

- At 1:08:23, he shows his desk to the camera, as requested by the proctor.
- At 1:08:55 he opens the drawer under the desk but the inside of the drawer is not visible.
- At 1:09:09, the proctor asks the student to show them the drawer underneath his desk, but the student shows the proctor the door to the testing room.
- At 1:09:50, the student shows his desk and on the ground to the student's left there are what appear to be white squares on the ground but they are out of focus.
- At 1:10:49, the proctor requests that the student place his laptop in a place where they have a clear view of his desk.
- At 1:12:15, the proctor asks the student to open the drawer underneath his desk, which he does.
- At 1:12:23, the proctor asks the student to show underneath his desk, which he does.
- At 1:12:30, a white paper is seen underneath the student's desk.
- At 1:12:48, the student picks up the paper and shows the camera. As he is showing the paper to the camera, he says "I didn't know it was here but it was my notes but I assure you I didn't intentionally place it there. Probably didn't notice it when I was cleaning my desk earlier when before taking exam because I had to clean my desk before taking the exam" (sic). At the top of the white paper, it notes "FINANCIAL MANAGEMENT NOTES".
- At 1:13:12, the proctor asks the student "why was the piece of paper under your desk?". The student replied by saying "I didn't know this. I am so sorry. I didn't know this the piece of paper was here" (sic).

- At 1:14:32, you can be seen on the phone with the proctor. You show the other side of the white paper. At the top of the paper, it notes "CAPITAL BUDGETING".
 - At 1:15:05, the student said to the proctor "this is just one piece of paper which ah probably fell and I didn't didn't notice it. Probably came from my desk because earlier I was ... no from my draw. Because earlier I was cleaning my desk and my draw ... ok sorry".
 - At 1:17:25, the proctor notifies the student on the phone that as he had an unauthorised item in his exam, he wouldn't be allowed to continue with his exam.
 - At 1:26:29, the video footage ends.
25. Whilst reviewing the exam footage at timestamp 1:12:30, paper can be seen underneath Mr Nepomuceno's desk. At the proctor's request, Mr Nepomuceno picked up the paper and showed them to the camera. A photograph of the content on the paper shown by Mr Nepomuceno to the proctor was taken by the investigation officer who sent it to the exams team for confirmation that the written notes on the paper were relevant to the exam Mr Nepomuceno was taking.
26. The Committee had viewed the video footage and the photographs. It found that the photographs contained handwritten notes. At the top of the page shown on one photograph was written, "Financial Management Notes." At the top of the second page was written, "Capital Budgeting". There were handwritten notes under each heading.
27. The Committee was satisfied that the behaviour outlined above was an accurate account of what could be observed on the video.
28. In the course of the hearing, the Committee was shown sections of the video footage which showed Mr Nepomuceno looking down on a very regular basis during the course of the exam. The footage also showed the interaction between the proctor and Mr Nepomuceno leading to the discovery of the notes under his desk.

29. On 26 January 2023 the exams team forwarded the notes to the session lead, Person B. Person B had been contracted by ACCA to write the exam. They were asked to clarify whether the notes in the images were relevant to the exam. They responded, stating that, *“I have looked at the photographs. I can confirm that these notes are relevant to the FM syllabus. It is therefore highly likely that these notes have relevance to the September examination. Of course, not all students sit the same examination paper; there is no 'one' examination paper. But, the content of the later images is relevant to syllabus area D, which is always tested in every examination in some way”* .
30. On 01 March 2023, ACCA sent an email to Mr Nepomuceno’s registered email address informing him of the complaint and seeking his response by 15 March 2023.
31. On 17 March 2023, ACCA sent an email to Mr Nepomuceno’s registered email address reminding him of his obligation to co-operate with the investigation and seeking his response by 31 March 2023.
32. Mr Nepomuceno replied on 04 April 2023 and stated:

“Dear Sir/Ma'am;

First of all, I would like to apologize for responding to your email a day later than March 31, 2023. I hope this message of mine will be considered.

I would like to apologize for not keeping my phone out of arm's length as I made sure that my phone is ready anytime the proctor would call me for any concerns.

Regarding the paper that was found below my desk, truly, I did not notice it as I was focused on the exam and looking anywhere else would concern the proctor and doubt my integrity in taking the exam. I am planning to re-take the Financial Management (FM) exam in the June 2023 window as completion for my final requirements for graduation in San Beda University - Manila, hence, I would like to make things right and know how I can clear myself from the issue that occurred last September 9, 2022”.

33. On 04 April 2023, ACCA thanked Mr Nepomuceno for his partial response and requested that he provide a full response to all the questions put to him in ACCA's initial letter. As set out below under allegation 2, Mr Nepomuceno failed to respond to this or subsequent emails with regard to the investigation.
34. The Committee had noted that ACCA had alleged breaches of Examination Regulations 1 and 4.
35. In reaching its decision, the Committee had considered carefully the requirements of the Examination Regulations, in particular Examination Regulations 1, 4, and 6(a).

FINDINGS IN RESPECT OF ALLEGATION 1(a)

36. Examination Regulation 1 states that Mr Nepomuceno was required to adhere at all times to ACCA's Rulebook, the Exam Regulations and Exam Guidelines.
37. The Exam Guidelines includes the following:

"Move mobile phones, electronic devices, headphones and watches out of arm's reach."
38. As stated, the Committee was satisfied, having watched the video, that the description provided by the proctor in the report was consistent with what can be observed on the video. Mr Nepomuceno can be seen reaching behind him and then using his phone to speak to the proctor. The phone was therefore within arms-reach, contrary to the Exam Guidelines.
39. Indeed, in his response dated 04 April 2023, Mr Nepomuceno admitted that he had kept his phone within arm's reach during the exam.
40. The Committee also found that Mr Nepomuceno was familiar with the Examination Regulations and the Exam Guidance as he confirms as much at the outset of the exam.
41. Consequently, the Committee found allegation 1(a) proved.

FINDINGS IN RESPECT OF ALLEGATION 1(b)

42. Examination Regulation 4 states that Mr Nepomuceno was not permitted during the exam to possess (whether at his desk or on or about his person), use or attempt to use any notes, books or other written materials (whether in electronic form or otherwise) except those expressly permitted within the Exam Guidelines. These are known as 'unauthorised materials'.
43. If it is found that Mr Nepomuceno had in his possession unauthorised materials, this will amount to a breach of Examination Regulation 4. If it is found that the unauthorised materials, namely the notes, were relevant to the syllabus being examined, then, in accordance with Examination Regulation 6(a), it will be assumed that Mr Nepomuceno intended to use them to gain an unfair advantage in the exam. In those circumstances, the burden of proof shifts to Mr Nepomuceno who has to prove, on the balance of probabilities, that he did not intend to use them to gain an unfair advantage.
44. Based on the proctor's account, and the fact that the notes were found on the floor underneath Mr Nepomuceno's desk, the Committee was satisfied, on the balance of probabilities, that Mr Nepomuceno had in his possession handwritten notes which amounted to unauthorised materials. Therefore, the Committee found that Mr Nepomuceno was in breach of Examination Regulation 4.
45. The Committee relied on the evidence of Person B and found that the notes were relevant to the syllabus. It therefore assumed that Mr Nepomuceno intended to use the notes to gain an unfair advantage in the exam.
46. Consequently, Mr Nepomuceno was required to satisfy the Committee that he had not intended to use the notes to gain such an unfair advantage.
47. The Committee did not find Mr Nepomuceno's explanation in his email of 04 April 2023 that he was unaware of the notes under his desk to be credible. This is particularly so when considering what had been observed by the proctor who had said in the report, "*When inquired he tried to slip the paper under his desk multiple times.*" The Committee had also noted, when watching the video when preparing for the hearing, and also in the sections played at the hearing by Person A, the substantial number of occasions when Mr Nepomuceno looked down and appeared to be reading. The Committee was also satisfied that Mr

Nepomuceno had prevaricated and delayed in reacting to the request of the invigilator for Mr Nepomuceno to show the invigilator the lay out of the room in which he was taking the exam, particularly the area under his desk. Finally, the Committee had noted the failure on the part of Mr Nepomuceno to respond to questions raised by ACCA in further correspondence sent to him in the course of the investigation.

48. In the circumstances, the Committee was satisfied that Mr Nepomuceno had failed to provide the Committee with a credible explanation for his conduct in accordance with Exam Regulation 6(a).
49. The Committee found that, during the FM examination on 09 September 2022, Mr Nepomuceno had in his possession unauthorised materials in the form of notes and was therefore in breach of Exam Regulation 4. The notes were relevant to the syllabus relating to the exam. In the absence of a credible explanation, the Committee found that he was in possession of the notes with the aim of gaining an unfair advantage in his exam.
50. The Committee, therefore, found allegation 1(b) proved.

ALLEGATION 2

51. On 18 April 2023, ACCA sent an email to Mr Nepomuceno's registered email address attaching a letter of the same date, reminding him of his obligation to co-operate with the investigation. It set out in full the text of CDR3(1) and reminded Mr Nepomuceno to cooperate by providing answers to all of the questions contained in ACCA's letter of 01 March 2023. The letter of 01 March 2023 was also attached. Mr Nepomuceno was required to respond by 02 May 2023. He failed to respond.
52. On 04 May 2023, ACCA sent a further email to Mr Nepomuceno's registered email address reminding him of his obligation to co-operate and again seeking his response by 11 May 2023. Mr Nepomuceno was warned that an allegation of a failure to cooperate would be made against him if he did not respond. Again, he failed to respond.
53. On 15 May 2023, ACCA notified Mr Nepomuceno that a disciplinary report was being prepared for internal review.

54. The Committee was satisfied that the emails of 18 April 2023 and 04 May 2023 had been sent to the correct email address of Mr Nepomuceno. Indeed, it was the email address that he had provided to ACCA to be included on the register when he became a student member. It was also the same email address as the one used by Mr Nepomuceno in his response of 04 April 2023. There was no indication that the emails had not been delivered successfully.
55. The Committee was satisfied, on the balance of probabilities, that the emails had been received by Mr Nepomuceno and that he had failed to respond. This amounted to a failure to cooperate with ACCA in the course of its investigation and, on this basis, the Committee found allegation 2 proved.

ALLEGATION 3(a)

56. The Committee relied on its findings of fact under allegation 1(b) above.
57. The Committee reminded itself of the test for dishonesty as set out in the case of *Ivey v Genting Casinos* [2017] UKSC 67.
58. The Committee took into account the finding that Mr Nepomuceno, 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. The Committee found that he knew that his conduct was wrong.
59. 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.
60. Consequently, the Committee found allegation 3(a) proved.

ALLEGATION 3(b)

61. On the basis that this allegation was pleaded in the alternative to allegation 3(a), the Committee made no finding in respect of it.

ALLEGATION 4(a)

62. Taking account of its findings in respect of allegation 1 and its finding that Mr Nepomuceno had acted dishonestly in the course of an exam, the Committee was satisfied that he was guilty of misconduct in that such conduct could properly be described as deplorable. In the Committee's judgement, it brought discredit to Mr Nepomuceno, the Association and the accountancy profession.
63. In respect of allegation 2, 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 Nepomuceno had failed to cooperate with ACCA and to respond to correspondence.
64. 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.
65. The Committee found that the failure of Mr Nepomuceno to cooperate with his regulator amounted to misconduct in that such failure brought discredit to himself, ACCA and the accountancy profession.
66. Therefore, the Committee found allegation 4(a) proved.

ALLEGATION 4(b)

67. 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

68. 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 Mills, and legal advice from the Legal Adviser which it accepted.

69. 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.
70. 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.
71. The Committee considered whether any mitigating or aggravating factors featured in this case.
72. The Committee accepted that there were no previous findings against Mr Nepomuceno.
73. The Committee had no information regarding the personal circumstances of Mr Nepomuceno nor had it been provided with any testimonials or references as to Mr Nepomuceno's character. Indeed, there had been no engagement by Mr Nepomuceno in the course of the proceedings other than to say that he would not be attending the hearing.
74. Whilst Mr Nepomuceno was perfectly entitled to deny the allegations, the fact that he had not engaged in the hearing meant that there was no evidence before the Committee to suggest that Mr Nepomuceno had any insight into the seriousness of his conduct and he had not expressed any remorse.
75. The Committee had found Mr Nepomuceno 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.
76. The Committee found such serious conduct to be aggravated in that Mr Nepomuceno had not shown any evidence of insight.
77. The whole purpose of the Examination 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.

78. 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.
79. 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.
80. Mr Nepomuceno had also failed to cooperate with his regulator, ACCA, in respect of an investigation of potentially serious allegations. His conduct during the exam and his lack of full 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 provide evidence of any insight or contrition for his lack of cooperation, led the Committee to conclude that, currently, there was no guarantee that Mr Nepomuceno would behave in a manner expected of a member of ACCA.
81. The Committee had considered whether there were any reasons which were so exceptional or remarkable that it would not be necessary to remove Mr Nepomuceno from the student register but could find none.
82. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Mr Nepomuceno shall be removed from the student register.

COSTS AND REASONS

83. 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. The Committee had also considered ACCA's Guidance on costs.
84. The Committee concluded that ACCA was entitled to be awarded costs against Mr Nepomuceno, all allegations having been found proved. The amount of costs for which ACCA applied was £5,699.50. The Committee did not consider that the claim was unreasonable but noted that the hearing had taken less time than estimated.

85. Mr Nepomuceno had not provided ACCA with any documentary evidence of his means. The Committee was satisfied that, in the correspondence sent to him, Mr Nepomuceno 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.
86. In the absence of any information from Mr Nepomuceno, the Committee approached its assessment on the basis that he was able to pay any amount of costs awarded against him.
87. 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.

EFFECTIVE DATE OF ORDER

88. The Committee had considered whether the order should have immediate effect. However, ACCA did not seek such an order and, taking account of Mr Nepomuceno's status as a student member, 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.
89. 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 Tom Hayhoe
Chair
19 June 2024