



HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Mohammed Anas Rayammarakkar Veettil Faisal

Heard on: Wednesday, 26 June 2024

Location: Held remotely by Microsoft Teams

Committee: Mrs Wendy Yeadon (Chair)
Dr David Horne (Accountant)
Ms Deborah Fajoye (Lay)

Legal Adviser: Ms Ini Udom

**Persons present
and Capacity:** Ms Michelle Terry (ACCA Case Presenter)
Miss Mary Okunowo (Hearings Officer)

Summary: Removal from the Student register upon expiry of the appeal period.

Costs: £5,200.00

PRELIMINARY APPLICATIONS

1. The Disciplinary Committee (“the Committee”) convened in public to hear the allegations against Mr Faisal. Mr Faisal was not present or represented.
2. The papers before the Committee (‘the documents’) comprised:

- a. A Main Hearing Bundle (pp 1-130)
 - b. A Service Bundle (pp1- 21)
 - c. Video recording of the FBT Business and Technology examination
3. Mr Faisal was served with Notice of the hearing on 29 May 2024 by email only. The email address used was the email address registered with ACCA for Mr Faisal. The Notice included the details and information pertaining to this hearing and confirmed that it would be held remotely. The Committee's power to proceed in the absence of Mr Faisal was also explained within the Notice.
 4. ACCA applied to proceed in the absence of Mr Faisal. The Committee's attention was drawn to a telephone attendance note recording a conversation between ACCA and Mr Faisal on 25 June 2024 at 0848:

Mr Faisal has a DC hearing taking place on 26 June 2024. MO called Mr Faisal on the number which he has registered with ACCA to discuss his attendance at the hearing and the service email sent to him on 29 May 2024. The call rang and a male voice answered. MO greeted and introduced herself, she asked if she was speaking with Mr Faisal and the voice said yes. MO asked Mr Faisal to confirm his student number, Mr Faisal said that he is not continuing with ACCA, and therefore refused to provide his student number. MO asked Mr Faisal if he had received the emails sent to him, Mr Faisal said he did not receive his emails as he does not like to continue with ACCA. MO asked if he will be attending his hearing tomorrow, he said no. MO said she will send an email after the call to confirm what has been discussed and asked Mr Faisal to please confirm in writing that he will not be attending his hearing tomorrow and that the Committee can proceed in his absence, he said okay.

5. No confirmation in writing was received from Mr Faisal.
6. The Committee considered the submissions made and accepted the advice of the Legal Adviser. It had regard to the Guidance for Disciplinary Hearings.
7. The Committee decided that service had been properly effected. It acceded to ACCA's application to proceed in Mr Faisal's absence. It was in the public interest to proceed. Further, in light of Mr Faisal's comments during the 25 June 2024 telephone conversation and previous failure to engage and co-operate, the Committee had no

confidence that an adjournment would serve any purpose.

ALLEGATIONS AND BRIEF BACKGROUND

8. The allegations against Mr Faisal were as follows:

Mr Mohammed Anas Rayammarakkar Veettil Faisal ('Mr Rayammarakkar Veettil Faisal'), a Student of the Association of Chartered Certified Accountants ('ACCA'):

1. On 30 November 2020, in relation to a remotely invigilated FBT Business and Technology examination:
 - a) Failed to comply with instructions issued by ACCA personnel (as per the Student Information Sheet), in that he failed to ensure he was in a room with no-one else around him before the exam, contrary to Examination Regulation 2; and/or
 - b) Communicated with another person/s during the exam other than the exam Proctor contrary to Examination Regulation 16; and/or
 - c) Used, one or more unauthorised item, namely a mobile telephone and/or headphones before, during or after the exam, contrary to Examination Regulations 1 and/or 6; and/or
 - d) Used any or all of the unauthorised items listed in 1 (c) above to gain an unfair advantage in accordance with Examination Regulation 7(b) and/or
 - e) Was engaged in improper conduct designed to assist him in his exam attempt contrary to Examination Regulation 10
2. Gave false and/or misleading responses to the exam Proctor in that he attempted to deceive the Proctor about having a mobile telephone with him in the examination room, contrary to Exam Regulation 3.
3. Further, Mr Rayammarakkar Veettil Faisal's conduct as referred to in 1 (c) and/or 1 (d) above was;

- i) Dishonest, in that he used or intended to use any or all of the unauthorised items to gain an unfair advantage in an examination, or in the alternative,
 - ii) Failed to act with integrity.
- 4. Contrary to Regulation 3(1) of the Complaints & Disciplinary Regulations 2014 (as amended), Mr Rayammarakkar Veettil Faisal 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) 19 May 2021;
 - b) 09 June 2021;
 - c) 24 June 2021;
 - d) 23 September 2021;
 - e) 11 October 2021.
- 5. By reason of his conduct, Mr Rayammarakkar Veettil Faisal is:
 - a) Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the above matters or, in the alternative,
 - b) Liable to disciplinary action pursuant to bye-law 8(a) (iii) in respect any or all of the matters set out in Allegations 1, 2 or 4.
- 9. On 02 August 2019, ACCA registered Mr Faisal as a student. As such, he is bound by ACCA's Bye-laws and Regulations, including the Examination Regulations.
- 10. On 30 November 2020, Mr Faisal was due to take a FBT Business and Technology examination ('the Exam') remotely. That same day, the Proctor (the remote invigilator) filed an Incident Report in respect of conduct observed during the Exam.
- 11. The investigation has involved a review of the video footage of Mr Faisal's Exam. In particular, the video footage obtained has revealed that Mr Faisal was using a pair of wired ear/headphones and a mobile phone during the Exam. Mr Faisal can be seen and heard talking out loud and through the mobile phone to a third party. Prior to the Exam starting, Mr Faisal is seen talking to a third party in the room, as he looks up while speaking and a second voice can be heard. A translation of the conversation that took

place between, Mr Faisal and the third party/s before and during the examination has been obtained.

- 00:43 - Mr Faisal is observed inserting earphones into his ears.
- Before the Exam begins, Mr Faisal is observed talking out loud and looking up as if talking to a third party. A third party can also be heard talking in the testing area.
- Mr Faisal is given the following Proctor instruction “Now please place your cell phone behind you out of reach. Then, using your webcam, show me where it has been placed” (see chat log entry at 8:30pm) to which Mr Faisal responded, “I don’t have a cell phone unfortunately” (see chat log entry at 8:31pm).
- However, despite stating that he did not have a mobile device, in the video footage at 1:22:27 minutes, he is observed reaching to pick up a mobile phone which appears to have been next to him/within arm's reach during the Exam and he then proceeds to use this mobile device
- 15:33 - Mr Faisal takes out his earphones, following a request from the Proctor.
- 26:57 - The Exam is started.
- 48:24 - Mr Faisal bends towards his desk and says “what” as if trying to communicate with a third party.
- 50:45 - A mobile phone can be heard beeping and Mr Faisal looks to his left, as if the mobile phone is on his desk.
- 59:25 - Mr Faisal is observed leaving the testing area and can be heard either opening or shutting a door.
- 01:05:42 – 01:06:15 - Mr Faisal is heard talking through a mobile phone and third parties can be heard speaking. Mr Faisal can be heard saying “Come in Whatsapp’ to a third party. A translation of the conversation has been prepared.
- 01:10:07 - Mr Faisal is observed reinserting his earphones into his ears.

- 01:10:46 – 01:18:00 - Mr Faisal is heard talking out loud while he has his earphones in. He can be heard reading and discussing examination questions (questions 18, 26, 27, 28, 30 and 32) out loud and the third party can also be heard doing the same.
 - 17:30 - The Exam was terminated due to a suspected breach in the academic integrity of the Exam. Mr Faisal was advised to contact ACCA.
12. An investigation was commenced. This has involved obtaining documents and video footage of the Exam. In addition, early emails sent by Mr Faisal, prior to the investigation, were included within the documentation.
 13. ACCA's Investigations team contacted Mr Faisal, using his registered email address, on 19 May 2021 and he was informed of the complaint. He was asked a number of questions.
 14. On 09 June 2021, ACCA sent an email to Mr Faisal's registered email address reminding him of his obligation to co-operate with the investigation and seeking his response by 23 June 2021. This letter was accompanied by a copy of the letter dated 19 May 2021. No response was received.
 15. On 24 June 2021, ACCA sent an email to Mr Faisal's registered email address reminding him of his obligation to co-operate and again seeking his response by 08 July 2021. Mr Faisal was warned that an allegation would be raised against him if he did not respond. This email was accompanied by a copy of the letters from 19 May 2021 and 09 June 2021. No response was received.
 16. On 06 July 2021, ACCA sent an email to Mr Faisal's registered email address reminding him of his obligation to co-operate and seeking his response by 08 July 2021. This email was accompanied by a copy of the letter dated 19 May 2021. No response was received.
 17. On 23 September 2021, ACCA sent an email to Mr Faisal's registered email address attaching a letter which set out the translation obtained of his communication with third parties during the Exam. The letter sought a response from Mr Faisal by 30 September 2021. No response was received.

18. On 01 October 2021, ACCA sent two emails to Mr Faisal's registered email address, an encrypted one followed by an unencrypted one, reminding him of his obligation to co-operate and seeking his response by 08 October 2021. This email was accompanied by a copy of the 'Letter to student regarding translation' letter from 23 September 2021. No response was received.
19. On 11 October 2021, ACCA sent a final email to Mr Faisal's registered email address reminding him of his obligation to co-operate and seeking his response by 18 October 2021. This email was accompanied by a copy of the 'Letter to student regarding translation' letter from 23 September 2021. No response was received.
20. The allegations were referred to this Committee by the Independent Assessor and Mr Faisal was sent a Case Management Form ('CMF') on which he was asked to respond to the allegations. No response has been received.
21. Ms Terry requested that any matters of a personal nature be dealt with in private pursuant to CDR 11. The Committee accepted the advice of its Legal Adviser and ruled that any matter of a private nature should be dealt with in private.
22. On behalf of ACCA, Ms Terry submitted that the allegations should be found proved. She carefully took the Committee through the evidence available and referenced relevant parts of the video recording of the Exam and the two transcripts.
23. Ms Terry drew the Committee's attention to the Information Sheet for On-Demand CBE – Students sitting exams at home, which sets out the Exam Regulations and Exam Guidelines. Ms Terry also reviewed with the Committee the On-Demand CBE Announcements which must be read and understood before the start of the Exam.
24. Further, Ms Terry stressed that Mr Faisal had received specific instructions from the Proctor to remove his ear/headphones and also to put away any mobile telephone. Mr Faisal denied having a mobile telephone although he appeared to have one connected to his ear/headphones. The Committee further noted that a phone can be heard ringing during the Exam.
25. ACCA's case was that the rules and Regulations governing conduct within the Exam had been clearly set out to Mr Faisal, despite this he chose to act in direct contravention.

DECISIONS ON ALLEGATIONS AND REASONS

26. The Committee considered all of the documents before it, the submissions of Ms Terry on behalf of ACCA and Mr Faisal's early email correspondence where he apologised for his mistakes, prior to him failing to engage further with the investigation. The Committee accepted the advice of the Legal Adviser. The Committee bore in mind that the burden of proving an allegation rests on ACCA and the standard to be applied is proof on the balance of probabilities - in other words, the Committee asked itself whether the facts alleged by ACCA were 'more likely than not' to be true, based upon all the materials before it.
27. In relation to Allegations 1 and 2 the Committee had regard to all of the evidence before it and found these allegations proved. The conduct alleged was clearly evidenced by the video recording of the Exam, the transcript of the conversation between Mr Faisal and the Proctor and the transcript of the conversation Mr Faisal had with third parties during the Exam.
28. The Committee also noted the comments made by Mr Faisal in correspondence with ACCA, namely:
 - a. 'that incident was a mistake happened from my side and i really apologise for that' (11 February email)
 - b. 'And i promise one thing that what mistake i had done won't be repeated again at any cost because I understand the after effects of that and i sincerely regret and feel guilty' (13 February 2021 email)
 - c. 'What happened from my side is a real mistake and I feel sincere guiltiness for doing it' (20 March 2021 email)
29. These comments were made when Mr Faisal was requesting reactivation of his ACCA account. The comments were not full admissions to the current allegations, however, the Committee accepted that they supported ACCA's case.
30. The Committee then went onto consider Allegation 3(i). In accordance with the legal advice received the Committee considered the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 76:

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

31. The Committee paid careful regard to the instructions provided to Mr Faisal and his interactions with the Proctor. It was satisfied that Mr Faisal was subjectively aware of the rules and regulations relevant to conduct during the Exam. The conduct in question involved multiple breaches of the Exam rules and Regulations and included reading and discussing exam questions in a group chat with several others during the Exam. The Committee was satisfied that Mr Faisal’s conduct would be considered dishonest by the standards of ordinary decent people.
32. The Committee considered Regulation 6(b) of the Exam Regulations and noted that it had no evidence or submissions before it from Mr Faisal to discharge the burden of proof upon him as a result of Regulation 6(b), and therefore the Committee determined that Mr Faisal had used or intended to use any or all of the unauthorised items to gain an unfair advantage in an examination. The Committee found allegation 3(i) proved.
33. Having found Allegation 3(i) proven the Committee did not go on to consider Allegation 3 (ii).
34. In relation to Allegation 4 the Committee concluded that on the balance of probabilities the allegation was made out. The Committee referred to the correspondence between the ACCA and Mr Faisal and the clear requests for information and assistance with the investigation. The correspondence referenced at Allegation 4 (a) - (e) was simply not responded to. Mr Faisal did not avail himself of the many opportunities that he was given to explain what had happened or assist the investigation. The Committee noted that, pursuant to CDR 3(1), Mr Faisal had a positive obligation to co-operate.

35. The Committee went on to consider whether the conduct found proved amounted to misconduct, as alleged in Allegation 5(a). It bore in mind that this was a matter for the judgement of the Committee.
36. The Committee was satisfied that any finding of dishonesty is a serious matter for a member of a professional body. The Committee considered honesty to be a fundamental tenet of the profession. It was in no doubt that Mr Faisal's action would be regarded as deplorable by fellow members of the profession and fell far short of the acceptable standards. The conduct therefore constituted misconduct under Bye-law 8(a)(i).
37. The Committee accordingly found Allegation 5(a) proved. In the circumstances it did not go on to consider the alternative allegation 5(b).

SANCTION AND REASONS

38. The Committee considered what sanction, if any, to impose taking into account ACCA's Guidance for Disciplinary Sanctions ('GDS') and the principle of proportionality. The Committee bore in mind that the purpose of sanctions was not punitive but to protect the public, maintain confidence in the profession and declare and uphold proper standards of conduct and behaviour.
39. The Committee had regard to Section F of the GDS and determined that the misconduct, which included findings of dishonesty and failure to co-operate with an investigation, was very serious.
40. The Committee took into account that no previous disciplinary findings had been made against Mr Faisal but also noted that he was a relatively new student member at the time of the misconduct. The Committee noted that the misconduct had occurred against a background of COVID and its impact. Despite these factors the Committee was not satisfied that there was mitigation of substance in favour of Mr Faisal bearing in mind the nature of the misconduct in question.
41. The Committee determined that the level of insight demonstrated by Mr Faisal was limited. Whilst apology had been expressed in correspondence in 2021, it related to requests for reinstatement and access to further examinations. Mr Faisal appeared to have no insight as to the impact of his actions on the standing of ACCA and the profession as a whole. The Committee considered this an aggravating factor.

42. The Committee went on to consider whether any further aggravating factors were present in this case and found the following:
 - a. The indirect harm caused to ACCA and the profession in general
 - b. The misconduct was pre-meditated
 - c. Mr Faisal acted in flagrant and deliberate breach of the Exam Regulations, which had been clearly set out to him in writing and by the Proctor
 - d. The lack of co-operation was repeated and deliberate
 - e. He had acted for his own personal benefit
43. Having found that Mr Faisal's actions amounted to misconduct of a very serious nature, taking no further action was clearly not appropriate. The Committee, therefore, considered the available sanctions in ascending order of seriousness.
44. The Committee considered that the misconduct in this case was not of a minor nature and, therefore, neither an admonishment nor a reprimand would be an appropriate sanction. These sanctions would not adequately mark the seriousness of the misconduct or satisfy the public interest.
45. The Committee went on to consider whether a severe reprimand would constitute an appropriate sanction in this case. It considered the guidance in the GDS. Mr Faisal had deliberately disregarded the Exam Regulations which had the potential to undermine the integrity of the exam system, and also, therefore, has the potential to cause harm to the reputation of the profession and ACCA. A finding of dishonesty had been made.
46. He had further repeatedly failed to co-operate with his Regulator which had the potential to undermine the entire investigation.
47. The Committee had before it no meaningful evidence of insight and no submissions or testimonials in support of Mr Faisal.
48. Bearing all of this in mind, the Committee was satisfied that a severe reprimand would not be appropriate or sufficient in this case and that the only appropriate and proportionate sanction was removal from the student register.
49. On behalf of ACCA, Ms Terry submitted that the order should have immediate effect.

The Committee was mindful of the content of Mr Faisal's conversation with ACCA on 25 June 2024 and decided that he did not present a threat to the public during the appeal period that needed to be avoided. It also noted the lapse of time between the misconduct and this hearing. It was concluded that it would be fair and proportionate for the sanction to take effect in the usual way at the expiry of the appeal period.

COSTS AND REASONS

50. ACCA applied for costs against Mr Faisal in the sum of £5,655. The application was supported by schedules, in detailed and summary form, providing a breakdown of the costs incurred by ACCA in connection with the hearing.
51. The Committee accepted the advice of the Legal Adviser.
52. The Committee found that, in principle, ACCA's application for costs was appropriately brought. It had regard to the important principle that in disciplinary proceedings the majority of its members should not subsidise the minority who find themselves within the disciplinary process.
53. The Committee paid careful regard to the principle of proportionality but again the Committee was not apprised of any information or details relating to Mr Faisal's means having not participated in the proceedings at all.
54. The Committee noted that the Guidance for costs, at paragraphs 27 - 29, stipulates the following:

Before making any reduction as to costs, the Committee must have evidence of the relevant person's financial circumstances. Importantly, the relevant person must provide some documentary proof, ideally through a completed Statement of Financial Position and supporting documentation.

If a relevant person does not provide proof of financial means, the Committee is entitled to infer that the relevant person is able to meet the costs that it orders.

In the absence of evidence or proof, Committees should not speculate as to the relevant person's means.

55. In the circumstances the Committee awarded costs in the sum of £5,200, the applied amount having been reduced to reflect the reduced costs incurred in the conduct of the hearing.

Mrs Wendy Yeadon
Chair
26 June 2024