

## HEARING

# DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

## REASONS FOR DECISION

<b>In the matter of:</b>	<b>Mr Debebe Alemayehu</b>
<b>Heard on:</b>	<b>Wednesday, 09 October 2024</b>
<b>Location:</b>	<b>Virtual hearing using Microsoft Teams.</b>
<b>Committee:</b>	<b>Mr David Tyme (Chair) Mr George Wood (Accountant) Ms Rachel O'Connell (Lay)</b>
<b>Legal Adviser:</b>	<b>Mr Charles Apthorp</b>
<b>Persons present and capacity:</b>	<b>Mr Ben Jowett (ACCA Case Presenter) Ms Anna Packowska (Hearings Officer)</b>
<b>Summary:</b>	<b>Allegations 1, 2, 3 (i), (ii), (iii) 4 a) and b), 5 and 6(i) found proved. Removed from Affiliate Register</b>
<b>Costs:</b>	<b>£5,000</b>

1. The Committee heard an allegation of misconduct against Mr Alemayehu, Mr Jowett appeared for ACCA. Mr Alemayehu was not present and not represented.
2. The Committee were provided with the following bundles: hearing bundle [1-63], an additional bundle [1], service bundle [1-16] and a video clip.

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3. The Committee had read the papers prior to the hearing.

### **SERVICE OF PAPERS**

4. The Committee considered the service bundle in order to determine whether the Notice of Hearing ("the Notice") dated 10 September 2024 had been served in accordance with the provisions of the Complaints and Disciplinary Regulations 2014 (amended 2020) ("the Regulations").
5. The Notice and the required documents were contained in the papers before the Committee. There was evidence that the Notice and documents were sent by email on 10 September 2024 to the registered email address notified by Mr Alemayehu to ACCA as an address for all correspondence. That was 28 days ago. The Committee noted that the service bundle contained a delivery receipt for the email service of the Notice.
6. The Committee was satisfied that this was effective service under the regulations.

### **PROCEEDING IN ABSENCE**

7. The Committee was satisfied that Mr Alemayehu had been served with the documents required by regulation 10(7) of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 in accordance with Regulation 22.
8. The Committee noted that there were two responses from Mr Alemayehu. Firstly, on 01 February 2024 when he responded to an email from ACCA and secondly on 03 September 2024 when he responded to a request for a completed case management form stating '*let me know your decision without my response*'. During the remainder of the investigation and subsequent process, ACCA had sent numerous emails to Mr Alemayehu's registered email address but there had been no response. ACCA also attempted to telephone him on the 08 October 2024 without success.
9. The Committee had no reason to doubt that Mr Alemayehu was aware that there were ACCA proceedings against him and that he knew, or had the means of knowing, of this hearing. The Committee concluded that he had decided not

to exercise his right to attend. The Committee considered that the public interest required that a hearing take place and that nothing would be gained by an adjournment.

10. The Committee determined to proceed in Mr Alemayehu's absence.

## **BRIEF BACKGROUND**

11. Mr Alemayehu registered as an ACCA student on the 10 May 2012. On the 14 March 2023 he took the remotely invigilated Strategic Business Leaders ("SBL") exam. On 25 April 2023, ACCA received an internal referral regarding a Facebook post containing a video clip of an answer provided by a student sitting the SBL exam.
12. ACCA's Exam Department confirmed that this matched the response provided by Mr Alemayehu during his sitting of the SBL exam on 14 March 2023.
13. Mr Alemayehu faced the following allegations:

## **ALLEGATIONS**

1. *On or around 14 March 2023, Mr Debebe Alemayehu video recorded, exam content displayed on his screen during his ACCA's Strategic Business Leader on-demand remotely invigilated exam.*
2. *Further to the matters referred to in allegation 1 caused or permitted the video footage to be shared with a third party or third parties*
3. *By reason of the matters referred to in allegations 1 and or 2 Mr Debebe Alemayehu is in breach of one or more of the following Exam Regulations:*
  - i. Exam Regulations 10*
  - ii. Exam Regulations 11*
  - iii. Exam Regulations 13;*
4. *Further, Mr Debebe Alemayehu's conduct at 1 – 2 above:*
  - a. Was dishonest in that the taking and retaining of the video footage*

*containing exam content could potentially assist him if he had to resit the same exam and thereby provide him with an unfair advantage, and/or*

*b. Was dishonest in that sharing the video footage of the exam content with another or other exam candidates sitting the same exam could provide them with an unfair advantage, or in the alternative;*

*c. Demonstrates a failure to act with integrity, or in the further alternative,*

*d. Was reckless in that Mr Debebe Alemayehu failed to have any or sufficient regard to the possibility that the sharing of video footage containing exam content with any other ACCA student (whether directly or otherwise) would provide them with an unfair advantage, if they were to sit the same exam.*

*5. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 Mr Debebe Alemayehu has failed to co-operate with the investigation of a complaint in that he failed to respond, fully or at all, to any or all of ACCA's correspondence as set out in Schedule A.*

*6. By reason of the matters set out above, Mr Debebe Alemayehu is:*

*i. Guilty of misconduct pursuant to bye-law 8(a)(i), or in the alternative*

*ii. Liable to disciplinary action pursuant to bye-law 8(a)(iii) in respect of allegations 3 & 5.*

Schedule A

26 October 2023

17 November 2023

02 January 2024

08 January 2024

## **DECISION ON FACTS/ALLEGATION(S) AND REASONS**

14. Mr Jowett relied on the documentary evidence exhibited in the bundle, the video clip and the evidence of Person A, an Exam Production Technician.
15. Mr Alemayehu became an ACCA registered student on 10 May 2012 and became an Affiliate on 17 April 2023. He sat the SBL exam on 14 March 2023. On 25 April 2023, ACCA received an internal referral regarding a Facebook post containing a video clip of an answer provided by a student sitting the SBL exam. The video clip was 58 seconds in length and recorded a student inputting their answer into an answer textbook. It was submitted by Mr Jowett that the Facebook group appeared to have used the video clip to sell exam assistance to ACCA students.
16. ACCA's Exam Department confirmed that the video clip matched the response provided by Mr Alemayehu during his sitting of the SBL exam on 14 March 2023. This was identified through the 2023 copyright notice in the top left corner of the video-clip, alongside the partly redacted title in the top centre.
17. ACCA were able using this information, in addition to the exam response shown within the video clip, to seek clarification from their external provider as to whether the response shown matched any scripts that were submitted for marking as part of the SBL March 2023 sitting.
18. On 24 April 2023, it was confirmed by ACCA's external provider that the content found on Facebook was indeed from an SBL exam sat on 14 March 2023. Person A in his witness statement confirmed that the exam content posted on Facebook contained an answer taken '*word for word*' from Mr Alemayehu's exam script.
19. On 26 October 2023, Mr Alemayehu was formally notified of ACCA's investigation into this matter and invited him to provide his comments and/or observations on the allegations being made against him. He failed to provide a response.
20. Mr Alemayehu was contacted by ACCA on the 17 November 2023, via email and reminded him of his duty to co-operate. No response was received. On 02 January 2024 ACCA sent a second and final reminder of his duty to co-operate

and asked for a response by 23 January 2024. In addition, no response was made by Mr Alemayehu to email contact on the 08 and 18 January 2024.

21. Mr Jowett invited the Committee to conclude that Mr Alemayehu recorded his screen during ACCA's SBL on demand remotely invigilated exam and subsequently caused or permitted the recording to be shared with a third party or third parties. He went on to submit that the content can still be found on Facebook demonstrates that at least one other person had in their possession a video clip of content taken from Mr Alemayehu's exam attempt. Mr Jowett submitted that if proved, such conduct, the distribution of exam content was dishonest and amounted to misconduct.
22. 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.

### **Allegation 1**

23. The Committee find allegation 1 proved.
24. The Committee carefully considered the images in the bundle, the video clip and the written evidence of Person A. The Committee noted and took account of Mr Alemayehu's good character in reaching its decisions.
25. The Committee noted that the video clip showed the inputting of an answer into a word processor text box and the evidence that the exam content posted on facebook contained a unique answer taken 'word for word' from Mr Alemayehu's exam script.
26. The Committee also took into account the email dated 24 April 2024 in which the exam production technician stated:

*"I am pleased to confirm that by cross referencing the text from the SSL video with student exam scripts we have identified a word for word match with the March 2023 SSL exam of student Debebe Alemayehu on registration number 2544210."*

27. The Committee concluded that the only plausible explanation for the exam content being on Facebook was that Mr Alemayehu had video recorded the exam content on the 14 March 2023.

### **Allegation 2**

28. The Committee find allegation 2 proved.
29. The Committee noted there was no evidence that any other person was present during the exam or any explanation from Mr Alemayehu how the video clip was recorded. The Committee having found allegation 1 proved went on to conclude that Mr Alemayehu having taken the video for it to appear on Facebook it was probable that he had caused or permitted the content of the video to be shared with a third party or parties.

### **Allegation 3 i), ii) and iii)**

30. The Committee find that Mr Alemayehu had breached exam regulations 10, 11 and 13 and therefore find allegation 3 i), ii) and iii) proved.
31. In respect of allegation 3 i) the Committee notes that the relevant Exam Regulation 10 states that *"You may not engage in any irregular conduct designed to assist you in your exam attempt or provide any improper assistance to any other exam entrant in their exam attempt."* The Committee find that the taking of a video of part of an exam could only be intended to provide assistance to Mr Alemayehu or another, there was in its view no other purpose for taking the video.
32. In respect of allegation 3 ii) the Committee notes that the relevant Exam Regulation 11 states *"If you are taking a computer-based exam you are not permitted to copy exam content in any manner or take photograph(s) or videos of your screen or permit any other person to do the same"*. The Committee find that in breach of Regulation 11 Mr Alemayehu had taken a video of his screen during an exam.
33. In respect of allegation 3 iii) the Committee notes that the relevant Exam Regulation 13 states: *"Exam content (questions, scenarios, format) is owned by ACCA. You are prohibited from copying, photographing, videoing or*

*reproducing in any manner exam content (questions, scenarios and/or format). You are strictly prohibited from distributing or seeking to exploit for commercial/personal gain and/or any other reason, copies of exam questions or scenarios to any person including other ACCA registered candidates".* The Committee find that in breach of Regulation 13 Mr Alemayehu had taken a video of his screen during an Exam and intending to make it accessible to a third party or parties.

**Allegation 4 (a) and (b)**

34. The Committee find allegation 4(a) proved. In reaching this finding the Committee took into account the fact Mr Alemayehu was of previous good character, having no previous regulatory findings made against him. The Committee at allegation 1 have previously found that Mr Alemayehu had video recorded exam content during his SBL exam and at allegation 2 had shared the content with others.
35. In consequence, the Committee found that Mr Alemayehu was aware that the use of an electronic device to record content of an exam was a breach of the Exam Regulations and that he intended to gain an unfair advantage in the examination or subsequent results of the examination. The Committee concluded that he had read the examination guidance prior to starting the examination. The Committee also took into account that he had taken exams in the past with similar restrictions, and so would have been aware or ought to have been aware of the prohibited nature of such devices and the recording of Exam content.
36. Having established his 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 4(a) proved.
37. The Committee find allegation 4(b) proved. The Committee find that that Mr Alemayehu would have been aware that the only purpose of sharing his exam content with others was to enable them to gain an unfair advantage when they



came to sit the SBL examination. Having established his 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 assisting others in gaining an advantage and/or '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 4(b) proved.

38. The Committee did not go onto consider allegations 4(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) and/or (b) was not proved.

#### **Allegation 5**

39. The Committee find allegation 5 proved. The Committee noted the correspondence sent by ACCA to Mr Alemayehu, as set out in schedule A, and his lack of response or engagement in the disciplinary investigations.
40. The Committee had regard to the emails and accompanying letters sent on the following dates included in the hearing bundle, 26 October 2023, 17 November 2023, 02 January 2024 and 08 January 2024 by ACCA. The Committee notes that there was evidence that the 02 and 08 January 2024 emails were accessed. The Committee concluded that the earlier emails seeking Mr Alemayehu's cooperation with the investigation were sent as they were included with the later emails sent in January 2024.
41. The Committee noted that Mr Alemayehu had responded on two occasions but had not responded fully to the ACCA investigation or had provided requested information or completed the case management form. It concluded that Mr Alemayehu was aware of the obligation to fully cooperate with ACCA as his regulator with the investigation of the complaint and failed to do so.

#### **Allegation 6 (i)**

##### **Misconduct and Liability to Disciplinary Action**

42. In relation to allegations 1 and 2 the Committee considered Mr Alemayehu's conduct in engaging in the taking of a video of the examination and providing it

to third parties. In the Committee's view his dishonest conduct, as found proved at allegation 4, undermined the validity of the examination process. The Committee also considered that the failure to cooperate with the investigation undermined the regulatory purpose of the ACCA and it was in the public interest for members to engage with investigations into the conduct.

43. In the Committee's view there were individual and culminative breaches of the regulations, which were serious, striking at the core role of the Regulator, which was to maintain standards and public confidence in the profession.
44. It found that allegations 1, 2, 3, 4(a) (b) and 5 taken together amounted to serious misconduct.
45. The Committee did not go on to consider allegation 6 (ii) as it was put in the alternative.

#### **SANCTION(S) AND REASONS**

46. Mr Jowett 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.
47. The Committee considered what sanction, if any, to impose in the light of its findings, having regard to ACCA's Guidance for Disciplinary Sanctions (2024). It first sought to identify aggravating and mitigating factors.
48. Mr Alemayehu had no previous disciplinary findings against him. In the Committee's view this was a mitigating factor as he had been an ACCA student at the date of the Exam for 12 years.
49. 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 premeditated. The Committee concluded that he must have taken a camera or a mobile with a camera into the exam with the intention of recording

part or the whole of the Exam.

50. In the Committee's view Mr Alemayehu had committed what it considered to be serious and multiple examples of misconduct.
51. The committee took into account of section E2.3 of ACCA Guidance for Disciplinary Sanctions regarding findings of dishonesty and noted that Mr Alemayehu had not provided any mitigation which was remarkable or exceptional that warranted anything other than exclusion from the affiliate register.
52. 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.
53. In respect of a reprimand the Committee considered both the dishonest conduct and the failure to cooperate in the regulatory investigation to be serious and not minor.
54. Taking both matters into account the Committee considered that a severe reprimand was not a sufficient sanction as there was a continuing risk to public confidence and the risk to validity of ACCA examination process.
55. 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 the undermining of the regulator by failing to cooperate with a disciplinary investigation. The Committee determined that in all the circumstances the only proportionate sanction was to direct that Mr Alemayehu be removed from the Affiliate Register.

## **COSTS AND REASONS**

56. Mr Jowett applied for costs totalling £6,020 and referred the Committee to the costs schedules and drew the committees attention to the length of the hearing, which was less than the estimated 6 hours.
57. 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, however it was appropriate to make a reduction as the hearing had not run for a full day. Therefore, the reasonable costs are assessed to be £5,000.

58. There was no information before the Committee about Mr Alemayehu's means.
59. 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 his means provided to ACCA and the Committee. The Committee directed that he pays £5,000 towards ACCA's costs.

#### **IMMEDIATE ORDER**

60. Mr Jowett invited the Committee to direct that the order come into effect immediately he submitted it was necessary to protect the public and in the public interest and referred to the findings of the Committee in support.
61. The Committee in reaching its decision took into account that there had been no application for an interim order. It determined that it was not necessary for the order to come into effect immediately as there was no public protection issues which would arise during the appeal period of 21 days.

#### **ORDER**

62. The Committee **ordered** as follows:
  - (a) Mr Debebe Alemayehu shall be removed from the Affiliate Register.
  - (b) Mr Debebe Alemayehu shall make a contribution to ACCA's costs of £5,000.

**Mr David Tyme**  
**Chair**  
**09 October 2024**