

## HEARING

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

#### REASONS FOR DECISION

<b>In the matter of:</b>	<b>Mr Tushar Dhingra</b>
<b>Heard on:</b>	<b>Thursday, 12 September 2024</b>
<b>Location:</b>	<b>Virtual hearing using Microsoft Teams.</b>
<b>Committee:</b>	<b>Mrs Colette Lang (Chair) Dr David Horne (Accountant) Ms Victoria Smith (Lay)</b>
<b>Legal Adviser:</b>	<b>Mr Charles Apthorp</b>
<b>Persons present and capacity:</b>	<b>Mr Christopher Saad (ACCA Case Presenter) Miss Nicole Boeteng (Hearings Officer)</b>
<b>Observer:</b>	<b>Mr Bill Matthews (Appointments Board)</b>
<b>Summary:</b>	<b>Removed from Student Register</b>
<b>Costs:</b>	<b>£5,188.50</b>

#### SERVICE OF PAPERS

1. Mr Dhingra was neither present nor represented.

#### ACCA



+44 (0)20 7059 5000



info@accaglobal.com



[www.accaglobal.com](http://www.accaglobal.com)



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

2. The Committee considered the Service Bundle with pages numbered 1-20 in order to determine whether the Notice of Hearing ("the Notice") dated 13 August 2024 had been served in accordance with the provisions of the Complaints and Disciplinary Regulations 2014 (amended 2020) ("the Regulations")
3. The Committee noted that the email was sent by the Hearings Officer to the member on 13 August 2024 at 15.14 hrs. The Committee noted the delivery receipt of the same date at 15.14.41 contained in the Service Bundle.
4. The Committee noted that the Notice had been sent to Mr Dhingra's registered email address held by ACCA and the Notice complied with the other requirements of the Regulations.
5. The Committee was satisfied that this was effective service in accordance with the Regulations.

#### **PROCEEDING IN ABSENCE**

6. The Committee considered whether it should proceed in Mr Dhingra's absence and recognised it could only do so with care and caution.
7. The Committee noted that the email which had been sent on 13 August 2024 to Mr Dhingra's registered email address had been opened and therefore concluded it was an active email address at that time. On the balance of probabilities, the Committee concluded that the registered email address provided continued to be active when service took place.
8. The Committee noted that Mr Dhingra had not engaged with the investigation and had not made an application for the hearing to be adjourned. The Committee took into account the telephone note of 10 September 2024 in which it is recorded that Mr Dhingra stated he was not intending to attend the hearing. The Committee noted the absence of any evidence that if the hearing was adjourned to another date Mr

Dhingra would attend the adjourned hearing. In all the circumstances the Committee concluded that Mr Dhingra was aware of or had the means to be aware of the hearing and had voluntarily absented himself.

9. The Committee recognised that there was a strong public interest in regulatory proceedings being considered and concluded expeditiously, particularly given the serious nature of the allegations.
10. The Committee determined that it was fair and just to proceed in Mr Dhingra's absence in accordance with its discretionary power at Regulation 10(7) and that a fair hearing could take place in his absence.
11. The Committee was provided with the following bundles: Hearing Bundle (1-72), the examination recording ("Video") and a Service Bundle (1-20).
12. Mr Dhingra faced the following allegations:

## **ALLEGATIONS**

Mr Tushar Dhingra ('Mr Dhingra'), a student of Association of Chartered Certified Accountants ('ACCA'):

1. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2020, 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) 5 August 2021;
  - (b) 27 August 2021;
  - (c) 13 September 2021.
2. Contrary to Examination Regulation 1 and the Examination Guidelines, which say you are permitted to have 'a [singular] noiseless, cordless pocket calculator', on 29 June 2021 during and in relation to his remotely invigilated FFA Financial Accounting examination (the 'Exam'), Mr

Dhingra had two calculators on his desk.

3. By reason of his conduct in respect of the matter set out at Allegation 1, Mr Dhingra 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).
4. By reason of his conduct in respect of the matter set out at Allegation 2, Mr Dhingra is liable to disciplinary action pursuant to bye-law 8(a)(iii).

#### **BRIEF BACKGROUND**

13. Mr Dhingra registered as an ACCA student on 12 February 2021 and as such he is bound by ACCA's Bye-laws and Regulations. On 29 June 2021 Mr Dhingra attended a remotely-proctored exam in order to sit a FFA Financial Accounting Exam. Prior to the exam commencing Mr Dhingra was provided with an attendance docket which contained the ACCA Guidelines and the Examination Regulations and informed the proctor that he understood the rules as stated.
14. During the exam the invigilator's attention was drawn to Mr Dhingra having two calculators on the desk in front of him, this was drawn to Mr Dhingra's attention at the time. On 30 June 2021 ACCA's CNE delivery emailed Mr Dhingra informing him that his conduct would be referred to the Professional Conduct Department.
15. Mr Dhingra was subsequently referred to the investigations department and on 5 August 2021 was informed of the details of the complaint and a response to the complaint was sought by 26 August 2021. No response was received. Two follow up letters were sent to Mr Dhingra on 27 August 2021 and 13 September 2021.

16. Mr Saad in submissions relied on the documentary evidence, the Video and correspondence with Mr Dhingra. He did not call any witnesses. As set out above Mr Dhingra made no written responses to questions put by the ACCA in relation to the issues in this case.
17. The Committee considered these carefully, reviewed the exhibits and took account of the written submission of ACCA. The Committee received advice from the Legal Advisor.

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

### **Allegations 1 a), b) and c)**

18. The Committee found Allegation 1 proved.
19. The Committee noted the correspondence sent to Mr Dhingra on 5 August 2021, 27 August 2021 and 13 September 2021. It took into account the obligation of an ACCA student or member to cooperate with an investigation. It was satisfied that Mr Dhingra had received and opened the emails sent by ACCA and as a result was aware of the allegations.
20. It was satisfied that Mr Dhingra had not responded to the letters and therefore found Allegations 1 a), b) and c) proved.

### **Allegation 2**

21. The Committee found Allegation 2 proved.
22. The Committee had regard to the Exam Regulations, which it was satisfied Mr Dhingra was provided with. It was also satisfied that he was aware of the instructions provided prior to the commencement of the Exam.
23. The Committee reach the following conclusions:
  - a. Mr Dhingra had failed to comply with the clear instructions, that he had

been provided with, that no unauthorised material should be taken into the examination.

- b. Mr Dhingra's proven conduct (possession and use of unauthorised material during an examination) was deliberate and intentional and thereby amounted to a breach of the Exam Regulations.

### **MISCONDUCT AND LIABILITY TO DISCIPLINARY ACTION**

24. In respect of Allegation 3a) the Committee took into account that the misconduct alleged was in respect of Allegation 1 and Mr Dhingra was a student member. The Committee noted that the allegation arose from Mr Dhingra failing to respond to his regulator's investigation into his conduct during a professional examination.
25. The Committee in reaching its decision had regard to Bye-law 8(d) including the repetition of the conduct and the extent of the breach of the regulations. It determined that this conduct could not be regarded as anything other than entirely unacceptable behaviour which brought the profession into disrepute and plainly constituted misconduct. It concluded that it was a fundamental tenet of membership of ACCA even student membership, that the member comply with ACCA Regulations. However, the Committee determined that this was not at the most serious end of the range of professional misconduct.
26. The Committee did not go on to consider Allegation 3b) whether there was a breach of bye-law 8(a)(i) as this had been put as an alternative allegation if Allegation 3a) was not proved.
27. The Committee took into account its finding on Allegation 2 and determined that Mr Dhingra, in respect of Allegation 4, was liable to disciplinary action pursuant to Bye-law 8(a)(iii) as contrary to the Exam Regulations he had two calculators on his desk during the exam.

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

28. Mr Saad 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.
29. 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).
30. The Committee first determined the seriousness of the misconduct. In its view the failure to co-operate with an investigation would always be considered a serious matter.
31. The Committee went on to identify aggravating and mitigating factors. Mr Dhingra had no previous disciplinary findings against him. That was a mitigating factor, although not a strong one given his status as an ACCA student. It also noted his [PRIVATE] and that he was relatively new to ACCA membership. In the Committee's view there was limited mitigation.
32. The Committee next considered whether there were any aggravating factors. It found that the conduct had an element of planning by taking two calculators into the Exam, which could undermine the validity and integrity of the examination process. It also found that Mr Dhingra was fully aware of his obligations to respond to inquiries made by ACCA during the investigation process. In addition, it found that Mr Dhingra failed to show any insight into his conduct and there was no evidence of remorse into what the Committee considered to be serious breaches.
33. The Committee considered that it would be wholly insufficient to take no further action or impose an admonishment. Neither of those sanctions would reflect the seriousness of the conduct. It noted that there was no evidence of insight or an understanding of the seriousness of the conduct or on the impact of the conduct on the reputation of the profession.

34. In respect of a reprimand the Committee again considered the seriousness of the misconduct and the failure to demonstrate insight and determined a reprimand was insufficient.
35. The Committee considered the factors listed at C4.1 in the Guidance. The Committee considered that a severe reprimand was not a sufficient sanction as there was a continuing risk to public confidence in the regulation of the profession and the ACCA as a regulator. It also took into account the risk to the validity of the ACCA examination process and confidence placed in it.
36. The Committee considered the factors listed at C5.1 in the Guidance. It noted that in addition to showing no insight or remorse, Mr Dhingra offered no reflection. It notes that there was a lack of understanding and insight into the seriousness of the misconduct, the failure to engage with the investigation and the regulatory process. The Committee determined that this matter had potential to harm the reputation of the profession. It also took into account the importance of protecting the integrity of the profession's examinations. It therefore determined that the only proportionate sanction was to direct that Mr Dhingra be removed from the Student Register.

#### **COSTS AND REASONS**

37. Mr Saad applied for costs totalling £5,708.50. He acknowledged that this was based on an estimated hearing time of a full day whereas the actual time was less. He invited the Committee to consider making an appropriate reduction.
38. 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 appropriate to make a reduction for the fact that the hearing had lasted for less time than estimated. Therefore, the



Committee determined to reduce the reasonable costs to paid to ACCA to £5,188.50.

39. There was no information before the Committee about Mr Dhingra's means or personal circumstances. The Committee determined that there was no basis to depart from the standard position that the reasonable costs of the ACCA should be paid by the member. The Committee directed that Mr Dhingra pay £5,188.50 towards ACCA's costs.

#### **IMMEDIATE ORDER**

40. The Committee considered whether Mr Dhingra be removed pending the expiry of the Appeal period. The Committee noted that there has been no interim order sought in the last three years. It determined that it was not necessary to impose an immediate order as there was no identified risk to the public.

#### **ORDER**

41. The Committee ordered as follows:
- (a) Mr Dhingra shall be removed from the Student Register.
  - (b) Mr Dhingra shall make a contribution to ACCA's costs of £5,188.50.

**Mrs Colette Lang**  
**Chair**  
**12 September 2024**