

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Ajibola Ashimi
Heard on:	Friday, 17 January 2025
Location:	Virtual hearing via Microsoft Teams
Committee:	Ms Wendy Yeadon (Chair) Ms Yvonne Walsh (Lay) Mr Ryan Moore (Accountant)
Legal Adviser:	Ms Jane Kilgannon
Persons present and Capacity:	Mr Ajibola Ashimi (Student Member) Mr Leonard Wigg (Case Presenter on behalf of ACCA) Miss Mary Okunowo (Hearings Officer)
Summary:	Allegations 1(a) and 3(b) found proved. Allegations 1(b), 2(a), 2(b) and 3(a) found not proved.
Outcome:	No further action.
Costs:	No costs order made.

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1. The Disciplinary Committee (the Committee) reconvened to consider the case of Mr Ajibola Ashimi (Mr Ashimi). The case had been initially considered by the Committee on 25 April 2024 but adjourned on the application of the Association of Chartered Certified Accountants (ACCA).
2. Mr Leonard Wigg (Mr Wigg) represented ACCA. Mr Ashimi attended the hearing and was not represented.
3. The Committee had confirmed that it was not aware of any conflicts of interest in relation to the case.
4. In accordance with Regulation 11(1)(a) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 (the Regulations), the hearing was conducted in public. However, pursuant to the Committee's decision on 25 April 2024 taken in accordance with Regulation 11(1)(b) of the Regulations, any matters relating to the health or family circumstances of Mr Ashimi were heard in private.
5. The hearing was conducted remotely through Microsoft Teams.
6. The Committee had considered in advance the following documents:
 - a. The original hearing bundle from 25 April 2024 (pages 1 to 43), to which had been added further documentation (pages 44 to 63); and
 - b. A Service bundle (pages 1 to 18).

BRIEF BACKGROUND

7. Mr Ashimi became a student member of ACCA on 10 February 2022.
8. On 22 February 2022, Mr Ashimi sat ACCA's Management Accounting (MA) examination at a Kaplan examination centre in Nottingham, United Kingdom. It was a three-hour examination, starting at 1:30pm.
9. Following the examination, the centre invigilator completed an 'SCRS Form 1B Unauthorised Material'. In it she stated that Mr Ashimi had been found in possession of unauthorised materials, namely "*ACCA MA Pocket notes*", at 3:40pm on the day of the examination. She stated that the notes had been

found in the front pocket of Mr Ashimi's black "Hoodie". She reported that Mr Ashimi had "said he had not used the pocket notes and got quite angry [...]".

10. The centre invigilator also stated:

"Student arrived 10 minute late missing the invigilator announcement. We informed him of our guidelines and the exam procedure. He attempted to take his apple watch and wallet into the exam room. We sent him back to his locker to turn off the watch and put these items away. It was repeated their that no unspecified items aloud on your desk. Our invigilator noticed the student staring and fidgeting for a substantial period, after keeping a closer eye, witnessed a flash of a ring binder on his person, invigilator asked him to empty his pockets finding a ACCA MA Pocket no [...] "sic".

11. On the day of the examination, Mr Ashimi completed an 'SCRS Form 2B Unauthorised Items / Materials'. In it he confirmed that:

- a. He had been present when the invigilator or supervisor announcements were made;
- b. He had read the 'Student Information Sheet' and 'ACCA's Exam Regulations & Guidelines'; and
- c. He was in possession of unauthorised materials whilst the examination was in progress.

12. Mr Ashimi stated in the form:

- a. *"The unauthorised material was pocket notes from Kaplan, it was found at 15:40, the invigilator found the pocket notes in the pockets of my overhead hoodie in which it was sticking out but not being used. The unauthorised material was relevant to the syllabus";*
- b. *"It was pocket notes relating to the module in which I was going through on my way to the exam but completely forgot it was in that pocket";*
- c. *"It was being looked at for revision before attending the exam";* and

- d. *“I did not use the material once during the exam, it was found in my pocket sticking out but was not once seen in my hands looking over the material, it was in my pocket in which I mentioned I didn’t know it was there and wasn’t using it”.*
13. Mr Ashimi stated in the form that he did not intend to gain an unfair advantage from the unauthorised materials.
14. In September and October 2022, ACCA wrote to Mr Ashimi seeking his comments about the incident.
15. On 28 October 2022, Mr Ashimi responded by email stating *“I do not wish to go through with the investigation as I would no longer like to sit exams with ACCA”.*
16. On 02 November 2022, Mr Ashimi sent an email to ACCA asking *“If it’s not accepted, what does this mean for me? I didn’t use any material to any advantage and no longer wish to study with ACCA”.* “sic”
17. On 02 November 2022, ACCA replied to Mr Ashimi by email, notifying him that his request to be removed from the ACCA student register would not be accepted whilst disciplinary proceedings against him were outstanding.
18. On 01 March 2023, Mr Ashimi sent an email to ACCA stating *“As previously mentioned, this book was found sticking out of my pocket and not in use. I simply forgot this book was there and was not used to any advantage. I explained this to the invigilator after the exam too. I no longer study with ACCA any longer and will not be taking on any exams in the future”.*
19. At the hearing held on 25 April 2024, following an unopposed application by Mr Ashimi, the Committee admitted two further documents for consideration. They were:
 - a. [PRIVATE]; and
 - b. [PRIVATE]
20. At the outset of today’s hearing, 17 January 2025, Mr Ashimi made a further application for the late admission of three documents. The documents were [PRIVATE]. The application was not opposed by ACCA. After receiving legal

advice from the Legal Adviser as to its discretion to admit late evidence pursuant to Regulation 10(4) of the Regulations, the Committee decided that it was in the interests of justice to admit the three documents. They were provided to the Committee in an Additional Bundle (pages 1 to 9).

ALLEGATIONS

Mr Ajibola Ashimi, a student of the Association of Chartered Certified Accountants ('ACCA'):

1. During a Management Accounting ("MA") examination held on 22 February 2022:
 - a. Was in possession of unauthorised material, namely an ACCA Management Accounting pocket notebook. (the 'Unauthorised Material'), contrary to Examination Regulation 4;
 - b. Used, or attempted to use, the Unauthorised Material in order to gain an unfair advantage in the exam
2. The conduct described in Allegation 1 was:
 - a. Dishonest, in that by reason of the matters referred to in allegation 1 above Mr Ashimi intended to gain an unfair advantage in his exam attempt; or in the alternative
 - b. Such conduct demonstrates a failure to act with integrity
3. By reason of his conduct, Mr Ashimi 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 Allegation 1.

DECISION ON ALLEGATIONS AND REASONS

Admissions

21. At the beginning of the hearing held on 25 April 2024, Mr Ashimi admitted to Allegation 1(a). Accordingly, Allegation 1(a) was announced as proved by way of admission.
22. There were no further admissions and so ACCA was required to prove the remaining matters alleged.

Evidence and submissions of ACCA

23. On 25 April 2024, Ms Michelle Terry (the ACCA Presenter on that occasion) took the Committee through the documentary evidence relied upon by ACCA. In particular, Ms Terry highlighted that:
 - a. The centre invigilator had confirmed that Mr Ashimi had been told about the examination guidelines and examination procedure before sitting the examination;
 - b. The centre invigilator had noted that Mr Ashimi's behaviour was "*suspicious*" and that he "*kept looking at the invigilator and looking around and was fidgety*";
 - c. Exam Regulation 4 states that "*You are not permitted to possess (whether at your desk or on or about your 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'*"; and
 - d. The unauthorised item found in Mr Ashimi's possession was a ring-bound notebook and it was found in the pocket of his hooded top.
24. Ms Terry submitted that Mr Ashimi had breached Exam Regulation 4 by using or attempting to use unauthorised materials in an examination. She also submitted that, pursuant to Exam Regulation 6(a), his purpose for doing so was to use the unauthorised materials in order to gain an advantage.
25. Ms Terry submitted that the most likely reason for Mr Ashimi having the notebook in his possession during the examination was so that he could use it to assist him during the examination. She submitted that – given the size, nature and location of the notebook when it was found - it was implausible and

improbable that Mr Ashimi would not have been aware of it or have forgotten its presence in his pocket during the examination.

26. Ms Terry submitted that Mr Ashimi's conduct was dishonest, or alternatively demonstrated a lack of integrity.
27. Ms Terry submitted that Mr Ashimi's conduct had brought discredit to himself, ACCA and the wider accountancy profession. She submitted that it was so serious as to amount to misconduct, rendering him liable to disciplinary action. In the alternative, Ms Terry submitted that Mr Ashimi was liable to disciplinary action on the basis of his conduct alleged at Allegation 1.
28. On 17 January 2025, Mr Wigg referred the Committee to the documents that had been added to the main hearing bundle since the hearing on 25 April 2024. He directed the Committee to email correspondence between Mr Ashimi and ACCA between 10 February 2024 and 25 September 2024, which he submitted showed that although Mr Ashimi had notified ACCA of [PRIVATE], Mr Ashimi's request for [PRIVATE] appeared to have been received too late for ACCA to process.
29. Mr Wigg submitted that Mr Ashimi had not done enough to prove that he did not intend to use the unauthorised materials that were in his possession on the day of the examination. He submitted that, [PRIVATE], that was insufficient to outweigh the strong indirect evidence that Mr Ashimi's intention on the day of the examination was to use the unauthorised material. In particular, he referred to:
 - a. Mr Ashimi's knowledge that the notebook was in his pocket because he has told the Committee that he was using it to revise immediately before the examination;
 - b. The substantial size of the notebook, suggesting it would be difficult to overlook;
 - c. The fact that Mr Ashimi had been asked to remove his wallet and smartwatch before the examination started, giving him an opportunity to take note as to whether he had any other unauthorised items in his possession;

- d. The fact that the invigilator had repeated the rules on unauthorised materials before the examination had started, giving Mr Ashimi an opportunity to think again about whether he had any unauthorised materials in his possession; and
 - e. Mr Ashimi was observed staring and fidgeting in the examination, which may suggest that he was aware of the notebook and thinking about how to use it without detection.
30. Mr Wigg submitted that such conduct was clearly dishonest, or in the alternative lacked integrity. He submitted that the conduct was serious enough to amount to misconduct.

Evidence and submissions of Mr Ashimi

31. On 25 April 2024, Mr Ashimi stated that:
- a. [PRIVATE];
 - b. [PRIVATE];
 - c. He was anxious when sitting the examination and so the invigilator's observation that he was acting suspiciously may have been a misinterpretation of his anxiety;
 - d. He had forgotten that he had the notebook in his pocket during the examination, had no intention of using it during the examination and did not use it during the examination; and
 - e. There is no evidence that he used the pocket notebook during the examination because he did not – it was found in his pocket, not in his hand, on his lap or on his desk.
32. During cross-examination, Mr Ashimi stated that he believed that ACCA and Kaplan (the learning provider and centre administering the examination) would have known about [PRIVATE] because he had informed them, either by telephone or email. He referred the Committee to the email from him to ACCA dated 10 February 2022.

33. On 17 January 2025, in response to a question from the Committee, Mr Ashimi confirmed that he had not had any external support with his study and preparation for his ACCA examination. It had been undertaken on a 'self-study' basis.
34. Mr Ashimi drew the Committee's attention to his further evidence, which he said showed that [PRIVATE].
35. Mr Ashimi submitted that he simply forgot that the notebook was in his possession. He stated that he had no intention to use it to gain an unfair advantage in the examination and has never, at any time, had any intention to cheat or to act in a way that lacked integrity.
36. Mr Ashimi told the Committee that he failed the examination in question. He also gave details of other recent examinations that he has sat and re-sat with another regulator.

Decisions and reasons of the Committee

37. The Committee considered all of the oral and documentary evidence before it and the submissions of Mr Wigg and Mr Ashimi.
38. 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 terms dishonesty, lack of integrity and misconduct.

Allegation 1(b) – not proved

39. In relation to Allegation 1(b), the Committee noted that it had already found, following Mr Ashimi's admission to Allegation 1(a), that Mr Ashimi had breached Regulation 4 of the Examination Regulations by being in possession of unauthorised materials during the examination – namely, an ACCA Management Accounting pocket notebook.
40. Referring to Mr Ashimi's completion of the 'SCRS Form 2B Unauthorised Items / Materials', the Committee noted that Mr Ashimi accepted that the contents of the ACCA Management Accounting pocket notebook were relevant to the examination syllabus in question. This was further confirmed by Mr Ashimi's

oral evidence that he was using the pocket notebook to revise prior to the examination.

41. Given this context, the Committee noted that Regulation 6(a) of the Examination Regulations imposed a rebuttable presumption that Mr Ashimi intended to use the pocket notebook to gain an unfair advantage in the examination. The Committee was aware, therefore, that the burden of proof now rested on Mr Ashimi to prove that he did not intend to use the notes to gain an unfair advantage in the examination.
42. The Committee accepted Mr Ashimi's account of events – that he had forgotten that he had the pocket notebook in his hoodie pocket when he entered and was sitting the examination. The Committee also accepted Mr Ashimi's assertion that he did not intend to use the pocket notebook to gain an unfair advantage in the examination. In coming to these conclusions, the Committee had particular regard to the following matters:
 - a. There was no evidence that Mr Ashimi had actually used the pocket notebook during the examination and ACCA had not put its case on that basis;
 - b. There was clear and consistent independent [PRIVATE] evidence that Mr Ashimi [PRIVATE];
 - c. Mr Ashimi's conduct leading up to the discovery of the notebook – [PRIVATE], his lateness to the examination, his forgetting to remove his smartwatch and him being observed to fidget – were all consistent with [PRIVATE];
 - d. This was Mr Ashimi's first ACCA examination;
 - e. Mr Ashimi had not received any help or support from others in the practical aspects of preparing to sit an ACCA examination;
 - f. Mr Ashimi did not pass the examination in question;
 - g. The substantial size of the pocket notebook made it unlikely that Mr Ashimi would have considered it possible to make reference to it during an in-person, invigilated examination without detection; and

- h. Mr Ashimi had given a clear, consistent and detailed account of what had happened – that he had been in possession of the notebook in the examination in error, with no intent to use it.
- 43. The Committee also took into account that Mr Ashimi was of good character, meaning that it was less likely that he would have acted with an intent to gain an unfair advantage, and it was less likely that he would have lied about his intentions.
- 44. Taking all of these matters into account, the Committee was persuaded that Mr Ashimi had proven that it was more likely than not that he did not intend to use the unauthorised materials to gain an unfair advantage in the examination.
- 45. Accordingly, the Committee found Allegation 1(b) not proved.

Allegation 2(a) – not proved

- 46. In relation to Allegation 2(a), the Committee applied the test for dishonesty set out in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67. Applying the first stage of the test, the Committee had regard to Mr Ashimi’s previous good character and its previous finding that Mr Ashimi did not intend to use the pocket notebook. On that basis, the Committee found that Mr Ashimi’s state of mind at the relevant time was that he was not aware that he was in possession of the notebook and had no intention to attempt to use the notebook to gain an unfair advantage in the examination. Applying the second stage of the test, the Committee considered that Mr Ashimi’s conduct would be viewed by ordinary decent members of the public, applying objective standards, not to be dishonest. The Committee considered that this was a genuine mistake with no malintent. Therefore, it could not be properly characterised as dishonest.
- 47. Accordingly, the Committee found Allegation 2(a) not proved.

Allegation 2(b) – not proved

- 48. The Committee considered whether his conduct had lacked integrity. It referred to the definition of integrity in the ACCA Code of Ethics and Conduct: “*to be straightforward and honest in all professional and business relationships*”.

49. Given its finding that Mr Ashimi had acted unwittingly in having the notebook in his possession during the examination and noting his immediate admission and cooperation with the ACCA investigation, the Committee considered that there was no evidence that Mr Ashimi's conduct had lacked integrity. He had made a genuine and unwitting error, but had been truthful, honest and straightforward about that error as soon as he became aware of it.

50. Accordingly, the Committee found Allegation 2(b) not proved.

Allegation 3(a) – not proved

51. In relation to Allegation 3(a), the Committee considered the seriousness of Mr Ashimi's conduct at Allegation 1(a).

52. The Committee bore in mind its earlier findings that Mr Ashimi had possession of the notebook due to an unwitting error and that he had not used, nor did he intend to use, the unauthorised materials to gain an unfair advantage in the examination. The Committee considered that such conduct was clearly unfortunate but, given the circumstances, was not serious enough to amount to misconduct. The Committee considered that the conduct did not bring discredit to Mr Ashimi, to ACCA or to the profession as a whole.

53. Accordingly, the Committee found Allegation 3(a) not proved.

Allegation 3(b) - proved

54. The Committee noted that byelaw 8(a)(iii) provided that a breach of an ACCA regulation automatically results in liability to disciplinary action. Therefore, noting its earlier finding that Mr Ashimi had breached Examination Regulation 4 by being in possession of unauthorised materials during the examination (Allegation 1(a)), the Committee found that Mr Ashimi was liable to disciplinary action.

55. Accordingly, the Committee found Allegation 3(b) proved.

SANCTION AND REASONS

56. In reaching its decision on sanction, the Committee took into account the evidence and submissions that it had already heard, and the further submissions made by Mr Wigg and Mr Ashimi.
57. Mr Wigg submitted that ACCA's position was neutral. He stated that a breach of an Examination Regulation was a serious matter and so that could be taken into account as an aggravating factor. He stated that potential mitigating factors included Mr Ashimi's previous good character and [PRIVATE].
58. Mr Ashimi submitted that his conduct had not been deliberate. Rather he had acted in error, after forgetting that he had the notebook in his possession. Mr Ashimi stressed that he had not intended to use the notebook and the only reason he had the notebook was [PRIVATE].
59. The Committee accepted the advice of the Legal Adviser, who referred it to Regulation 13(4) of the Regulations, relevant caselaw and the ACCA document 'Guidance for Disciplinary Sanctions'. The Committee bore in mind that the purpose of any sanction was not to punish Mr Ashimi, but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct, and that any sanction must be proportionate.
60. When deciding on the appropriate sanction, the Committee carefully considered whether there were any aggravating and mitigating features in this case.
61. The Committee considered that there were no aggravating features in this case.
62. The Committee considered the following to be mitigating features in this case:
 - a. [PRIVATE];
 - b. there were no previous disciplinary findings against Mr Ashimi – he was of previous good character;
 - c. this was a single, isolated incident;
 - d. there had been no repetition of the conduct;

- e. the conduct was not deliberate;
 - f. Mr Ashimi had made an early admission to the possession of the unauthorised materials and their relevance to the syllabus being examined; and
 - g. Mr Ashimi had fully engaged and cooperated with the investigation and disciplinary process.
63. The Committee considered that Mr Ashimi had demonstrated remorse and insight. It noted that he had made an early admission to possession of the unauthorised materials, and through his full engagement with the disciplinary process had shown that he appreciated the seriousness of the mistake that he had made. The Committee considered that Mr Ashimi had demonstrated that he had taken steps to remediate his conduct by seeking help and support with his study and examination preparation with another regulator. The Committee also noted that Mr Ashimi was now undertaking a government apprenticeship and, whilst no references had been provided, there had been no reports of any further complaints or referrals in relation to Mr Ashimi.
64. Taking all of these factors into account, the Committee assessed the risk of repetition to be low.
65. The Committee considered the available sanctions in increasing order of severity.
66. The Committee first considered whether to take no further action. Given its findings and with reference to the general principles set out in the ACCA Guidance for Disciplinary Sanctions, the Committee decided that taking no further action was the appropriate and proportionate response in this case.
67. The Committee's assessment of the seriousness of the case was low, because the act found proved had been unwitting and without malintent. The Committee's assessment of the risk of repetition was low because of Mr Ashimi's demonstrated remorse, insight and remediation.

68. The Committee considered that this was an exceptional case, where there were no aggravating factors and significant mitigating factors at play. Importantly, the Committee had found that [PRIVATE].
69. For these reasons, the Committee considered that it was not necessary to take action to protect the public, maintain proper professional standards or to maintain public confidence in the profession. Therefore, to take any further action would be disproportionate.
70. The Committee considered the next sanction up in order of severity, namely admonishment. However, given the circumstances set out in the paragraph above, the Committee considered that an admonishment would be an inappropriate and disproportionate response.

COSTS AND REASONS

71. Mr Wigg made an application for an award of costs against Mr Ashimi, totalling £11,424.50. The Committee was provided with both a simple and a detailed version of the Schedule of Costs, providing a breakdown of the activity undertaken by ACCA and the associated costs. Mr Wigg submitted that the costs claimed were appropriate and reasonable. Mr Wigg did, however, draw the Committee's attention to the fact that some elements of the costs set out in the schedule had been included based on an estimate of two full hearing days, whereas that length of hearing time had not been needed. He acknowledged that it would be appropriate for the Committee to make a corresponding reduction to any costs awarded.
72. Mr Ashimi provided the Committee with a Statement of Financial Position, setting out details of his financial means.
73. Mr Ashimi asked the Committee not to impose a costs order against him. He submitted that:
 - a. [PRIVATE]; and
 - b. [PRIVATE].

74. The Committee accepted the advice of the Legal Adviser who referred the Committee to Regulation 15(1) of the Regulations and the ACCA document 'Guidance for Costs Orders' (1 January 2021).
75. The Committee was not satisfied that it would be appropriate and reasonable to award ACCA the full amount of costs that it sought. Whilst ACCA had been justified in investigating these matters, the Committee noted that the only factual allegation found proven had been the matter that Mr Ashimi had admitted to immediately. Furthermore, Mr Ashimi had notified the ACCA of [PRIVATE] on 10 February 2022, and so the additional costs incurred because of the adjournment of the hearing on 25 April 2024, for ACCA to double-check its records in that regard, were a result of ACCA's conduct of the proceedings and not that of Mr Ashimi.
76. The Committee noted that Mr Ashimi's Statement of Financial Position indicated that [PRIVATE]. The Committee noted that no independent documentary evidence had been provided by Mr Ashimi to support the contents of that statement. However, having heard oral evidence from Mr Ashimi, whom the Committee found to be open, consistent and credible, the Committee found that Mr Ashimi [PRIVATE].
77. The Committee also considered Mr Ashimi's submission about [PRIVATE]. It considered that this was consistent with what Mr Ashimi had told the Committee.
78. Given the circumstances of the case (including the limited findings against Mr Ashimi), and taking into account Mr Ashimi's [PRIVATE], the Committee considered that the appropriate and proportionate action would be to make no award for costs.

Ms Wendy Yeadon
Chair
17 January 2025