

## **Case Study – Legal Adviser**

*Please read this transcript and please complete the reasons pro-forma at the end of this document:*

*Transcript:*

### **Chair:**

Good morning everyone. My name is Mohammed Ansari. I'm the Chair of this Disciplinary Committee for ACCA to consider the case of Mr Ronald Liburd an ACCA student. This hearing is being held remotely via Microsoft Teams.

I am joined on the Committee by the Accountant Panel Member, Mr Tom Grahams, and our Lay Panel Member Ms Anna Pendleton.

Mr Ronald Liburd is present today.

We also have an observer present- Mr Godfrey Behan who I believe is a member of the public interested in ACCA proceedings.

### **Case Presenter**

Good morning, My name is Siya Moyo and I am ACCA's Case Presenter.

### **Hearings Officer**

Good morning. I'm Naomi Patterson ACCA Hearings Officer.

### **Legal Adviser**

Good morning. I'm Nicolene Baptiste the Legal Adviser.

### **Chair**

Mr Liburd, Ms Baptiste has had a brief word with you already to advise you what we're doing today and how we will proceed. The function of the Legal Adviser is to give legal and procedural advice to the Committee, as and when required. I will now deal with any preliminary matters.

### **Case Presenter**

Sir, as you are aware, at the outset of the hearing ACCA applied to amend the allegations pursuant to Regulation 10(5)(a). Mr Liburd had been given notice. The proposed amendment is to correct a typographical error and does not prejudice Mr Liburd in any way.

### **Chair**

Mr Liburd, do you consent to the amendment of the allegation.

**Mr Liburd**

Yes, I consent. I have no issues with it.

**Chair**

We have decided to grant the application, having been satisfied that the amendment could be made without prejudice to Mr Liburd. Mr Liburd, I believe you have some other preliminary issues to raise.

**Mr Liburd**

Yes, I live at home with my mother. Four years ago, she was diagnosed with acute type 2 diabetes and rheumatoid arthritis. She needs a lot of care and can't be left alone for too long. I am her main carer. I will need to check on her throughout this hearing. Also, as I have previously mentioned, I have a very bad back problem and I cannot sit still for too long. I may have to get up to walk around from time to time during this hearing. Is that ok with you?

**Chair**

Mr Liburd, I am sorry to hear about your mother. If you need a break at any time to check on her please let us know and we will take a break. Of course, you can also stand up and walk around when you feel the need to. Please do let us know and we can take a break.

Now I'm going to ask our Hearings Officer to formally open the proceedings; by reading out for the record, the allegations that you face. She will ask you if you admit or deny those allegations.

**Hearings Officer**

The allegations against Mr Ronald Liburd are as follows:

- 1) Mr Ronald Liburd who is registered with ACCA as a student:
  - a. On 21 October 2019, Mr Liburd caused or permitted the submission to ACCA of one or more of the documents listed in Schedule A, which purported to have been issued by the University of ABC when, in fact, they had not been.
  - b. Mr Ronald Liburd's conduct as set out in paragraph 1a) above was:
    - i. Dishonest in that he knew the documents referred to in paragraph 1 a above, were false ;
    - ii. Contrary to the Fundamental Principle of Integrity.
  - c. By reason of his conduct as set out in 1a) and 1b) i and ii, Mr Liburd is:
    - i. Guilty of misconduct pursuant to Bye-law 8(a)(i).

**Schedule A**

1. Transcript for (BA Hon's) Accounting and Financial Studies from the University of ABC
2. Bachelor of Arts in Accounting and Financial Studies certificate dated April 2015 from the University of ABC

Do you admit or deny these allegations?

**Mr Liburd**

I deny them all.

**Chair**

I'm now going to ask Mr Moyo to present the case on behalf of ACCA. Mr Moyo, it is clearly not in dispute that the documents were bogus; and indeed Mr Liburd has already told ACCA that he was never a student at the University of ABC. So, we don't need you to take us through the evidence in detail, about the bogus nature of the documents.

**Case Presenter**

Sir, the case in summary is that Mr Liburd caused or permitted the submission of false academic documents, purportedly issued by the University of ABC, to secure exam exemptions from examinations F4, F5, and F6. The exemption request was received by the ACCA Exemptions Team, who sent the degree certificate and transcript to the University of ABC for verification. The documents were examined by the University and declared to be false.

Mr Liburd denies these allegations. Mr Liburd states that he disclosed his ACCA login details to four people. It has not been possible for ACCA to fully verify these explanations, and save for the fact that Mr Liburd may have enlisted help from third parties to facilitate the payment of exam fees and subscriptions; his explanation is not accepted. Specifically, ACCA relies upon the fact that Mr Liburd has provided no explanation why anyone would wish to apply for exemptions on his behalf, unless with the instruction of Mr Liburd. Or how they would know what exemptions to apply for.

The application included an exemption from the F4 examination, which Mr Liburd had previously failed; we say this is very telling, and establishes a clear motive for securing the exemptions he applied for, or were applied on his behalf, and at his request. Mr Liburd had to re-take his F7 exams three times, before ultimately passing this exam on the fourth occasion. Obtaining exemptions would obviously avoid the risk of future exam failures, and would save Mr Liburd a great deal of time and effort. Mr Liburd says he planned to sit the F4 to F6 exams in 2020, but there is no evidence of this. We say there was no such plan, because Mr Liburd was hoping his application for exam exemptions would be accepted by the ACCA. So that is the case.

**Chair**

Mr Liburd, I'm now going to ask you to present your case.

**Mr Liburd**

When I registered with the ACCA, I admit I gave my log in details to four friends. My annual

exemption fee, subscription fee, and exam revision fees were paid by my friends to help me. I was having financial difficulties because of my caring duties and they wanted to help me. Please tell me why I would pay to gain exemptions when I need the money to take care of myself and my mother?

The false documents ACCA sent to me are not familiar to me. The exemption request was sent from another email address. I think it was Simeon Marks who changed my details. Simeon and I used to be best friends but we had a disagreement and went our separate ways. He was very angry. When I became aware of the exemption request and the change of details, I checked my login details and realised that the phone number and email were not mine. I suspect Simeon changed my ACCA details and applied for the exemptions.

My mistake was sharing my login details – four people knew about my password and login details and one of them could have changed my details after paying the fees. I lost contact with them all and so clearly we are no longer friends. This is my submission.

**Chair**

Mr Liburd, Mr Moyo will ask you some questions about what you have just submitted.

**Mr Liburd**

Please can I take a break to go check on my mom and to walk about.

**(recording stopped from 10:30 am p.m. until 10.45 am)**

**Case Presenter**

Good morning Mr Liburd. Can I please check my understanding? I think it is right you accept the exam certificate -- the degree certificate and the transcript are both false?

**Mr Liburd**

I never studied at that University so they are not genuine.

**Case Presenter**

You said you first shared your login details in 2014? There was a change to your email address on 20 October 2019, the day before the application for exemptions was sent.

**Mr Liburd**

Yes.

**Case Presenter**

If you look at page 8 of the bundle, you will see the application for exemptions, and the documents which were submitted in support of the application. My question is did you mention to anyone that you wished to apply for exam exemptions, from the ACCA?

**Mr Liburd**

No, I didn't. I was not even aware that there is a procedure to get exemptions from ACCA.

**Case Presenter**

Did Mr Simeon Marks know which examinations you had passed?

**Mr Liburd**

Yes, he was aware that I'd passed certain exams.

**Case Presenter**

Mr Liburd, do you understand that a fee has to be paid for exam exemptions?

**Mr Liburd**

No, I was not aware of the exemptions process at all.

**Case Presenter**

Mr Liburd, what you are suggesting, is that Mr Marks went to a lot of trouble, to submit this application on your behalf, to produce fraudulent documents and to assemble the required documents. And in addition, he paid a fee. You say he did all this? Do you accept that?

**Mr Liburd**

Yes, someone did it, but I was not aware about it. It must have been Simeon.

**Case Presenter**

But only Mr Marks potentially could have done it, it sounds like. Let's clarify. Mr Liburd, can you help us? Do you say anyone other than Simeon Marks could have applied for these exemptions?

**Mr Liburd**

Yes, maybe. Maybe someone else.

**Case Presenter**

Mr Liburd, whoever applied for these exemptions on your behalf, must have gone to a great deal of trouble. They would have to assemble the relevant documents; and they would have to have produced fraudulent documents. Do you accept that?

**Mr Liburd**

Yes, maybe.

**Case Presenter**

The only person you have identified with any possible motive for getting you into trouble with the ACCA, is Mr Marks. And even if that is true, his motive would surely be very weak. Do you accept that?

**Mr Liburd**

I don't know why he would do that. I don't know his motives.

**Case Presenter**

You failed the F4 exam. And you also failed your F7 exam three times. You wanted these exemptions, didn't you? That would go to your benefit?

**Mr Liburd**

Yes I did fail but I didn't want the exemptions. I haven't got the qualifications necessary to get them.

**Case Presenter**

Mr Liburd, what I must suggest to you, is that you did speak to others about helping you obtain the exemption and whoever applied for these exemptions, was doing this with your authority. And with your help? And you or a third party, changed your email address the day before making the application, to disguise who was making the application on your behalf.

**Mr Liburd**

No, I didn't do that. I don't know about the process at all..

**Case Presenter**

So, those are my questions.

**Chair**

Thank you very much. Mr Liburd, that ends Mr Moyo's questions of you. We've now reached the stage when we ask both Mr Moyo on behalf of ACCA, and then you, to make your closing address to the Committee.

**Case Presenter**

Mr Liburd says that he's the innocent victim of a fraud; the explanation he has given doesn't make

sense. A key question is, why would anyone else apply for exemptions on behalf of Mr Liburd? He is the only person who will benefit if those exemptions are granted; a fee has to be paid for exemptions. So if someone else has made the application without Mr Liburd's knowledge or involvement, they've gone to a great deal of effort both in time -- in terms of their time, and in exercise of skills, in terms of producing false documentation. In order for the 'plan' in quotes, to succeed, the third party would have to acquire these bogus documents and pay the exemption fee out of their own pocket.

It is accepted that Mr Liburd gave access to his account to four people in 2014. However nothing happens until 2019, when the application for exemptions is made, and there is a change of email address. We say there must have been a clear plan to fraudulently obtain exemptions, and that Mr Liburd willingly participated in that fraud. The change of email address one day before the application for exemptions, is no mere coincidence; it was a way to disguise the origin of the application.

It is not credible that he didn't know an application for exemptions was being made based on false documents. He knew an application could not be made on any legitimate basis, because he did not have a qualifying degree.

Today Mr Liburd gave an account relating to Mr Marks motive for making a false application, and thereby get Mr Liburd into trouble with the ACCA. That explanation makes no sense.

The application for exemptions could have been successful, so how would that be getting back at Mr Liburd? it would mean Mr Liburd doesn't have to sit three exams, something surely Mr Liburd would be very grateful for. This plan would only succeed if the fraud was identified; and Mr Liburd's explanations that he was not involved in the fraud was not accepted. Mr Liburd's explanation that a fraudulent application had been made on his behalf would clearly have had more value, and more credibility, had he identified the fraud before the ACCA found out about it. And it's only because the ACCA discovered the fraud, and that this has been put to Mr Liburd, that he has come up with this convoluted explanation. So we say this is a very clear case of dishonesty, and the Committee should so find against Mr Liburd, if it finds that he was in any way involved in this fraudulent application for exam exemptions. The allegations should be found proved.

### **Chair**

Yes, thank you very much. Now, Mr Liburd, you heard all that Mr Moyo has said on behalf of ACCA, now is your opportunity to make your final reply to ACCA's case.

### **Mr Liburd**

For the past one and a half years, I was unable to concentrate on my studies because of this; I am not guilty. The mistake I made, was to provide my login details to other people. I would like to request, honestly request to the panel, please release me from these allegations, to allow me to

continue with my studies. I also cannot pay the costs. I don't know what I am going to do if I am excluded and can't achieve my ACCA membership status. Especially for something I knew nothing about. My account was changed without my knowledge. I was not aware. That's all I wanted to say.

### **Chair**

Mr Liburd, thank you very much.

I will turn to our Legal Adviser, and I will ask her if there is any legal or procedural advice we should receive at this stage?

### **Legal Adviser**

Well sir, you have now reached the stage at which you are required to make your findings on the facts; Where facts relating to the allegations are in dispute, the burden of proving the facts rests on the ACCA; it is important to remember that Mr Liburd is not obliged to prove his innocence. The standard of proof that applies, is the civil standard; you must not find a fact proved unless you're satisfied on the balance of probabilities, that it is more likely than not, to have occurred as alleged. When you make your decisions, you should have regard to the whole of the evidence, which includes the documentation before you, and the evidence you've heard from Mr Liburd. You should form your own judgement about which evidence is relied on, and which is not; which evidence you accept, and which you reject.

In relation to allegation 1(a), ACCA must establish all the evidence of the allegation, before it can be found proved. If you find allegation 1(a) proved, you then need to decide if Mr Liburd's conduct was dishonest. The test for dishonesty was set out, in the case of Ivey Vs Genting Casinos; and this is the test which you should apply.

If you do not make a finding of dishonesty, it is still open to you to make a finding that the fundamental principle of integrity has been breached.

If you find any of the facts proved, you'll need to decide whether they amount to misconduct. The best starting point is to refer you to ACCA's own definition of misconduct in the bye-laws.

Finally, the Committee must give written reasons for its decision; these need to be clear and must show how the Committee reached its decision.

And that is the end, sir.

### **Chair**

Thank you Mrs Baptiste.

We will retire, and consider everything, to make the decision. I will announce it. The written reasons will follow subsequently.

**(recording stopped from 12.59 p.m. until 15.21 p.m.)**



## **Chair**

Thank you, everyone, for your submissions and thank you, Mrs Baptiste, for your advice.

The Committee has reached its decision which I'm now going to read into the record. The Committee noted its powers on sanction were those set out in Regulation 13(4). It had regard to ACCA's Guidance for Disciplinary Sanctions, in particular Section E2 dealing with dishonesty, and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate. It accepted the advice of the Legal Adviser.

The Committee considered that the submission of false documents to gain exemptions from ACCA's exams was serious. The Committee considered Mr Liburd's response to the question of if he knew of a third party who may have had a motive to log into his account and submit false documents. Mr Liburd explained that he had no knowledge of any application for exemptions, and that he had not made an application for them. He contended that all this had been done by a Mr Simeon Marks.

The Committee rejected these assertions as not credible. It noted that Mr Liburd had not provided any evidence to support any of these assertions. The Committee was satisfied on the evidence before it that it was a reasonable inference to draw that the documents, sent from Mr Liburd's email address, were submitted by Mr Liburd himself, or by someone acting on his behalf. Further, the Committee accepted the evidence that a fee had to be paid before the exemptions could be granted. The Committee found it unlikely, in the extreme, that anyone would have paid fees for Mr Liburd to be granted exemptions, without Mr Liburd's knowledge and participation.

Accordingly, the Committee found Allegation 1(a) proved.

The Committee was satisfied that the intention on his part was to secure exemptions to which he knew he was not entitled. The Committee rejected the contention that these documents had been submitted by a person without his knowledge. It was satisfied that he had intended to use the documents, to gain exemptions to exams to which he was not entitled. It had no hesitation in concluding that Mr Liburd's conduct was dishonest according to the standards of ordinary decent people. Allegation 1(b)(i) was found proved.

The Committee next asked itself whether Mr Liburd was guilty of misconduct. It considered this in relation to each proved allegation individually and cumulatively. The Committee had regard to the definition of misconduct in Bye-law 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Mr Liburd's actions, as proved in 1(a) and 1(b), brought discredit on him, the ACCA and the accountancy profession. Submitting false documents with a view to gaining exemptions from exams to which Mr Liburd was not entitled, was deplorable conduct and reached

the threshold for misconduct. It considered that breaching the Fundamental Principle of Integrity was also misconduct but added nothing on the facts of this case to the finding of dishonesty.

The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. Trust and honesty are fundamental requirements of any professional. Dishonesty by a member of the accountancy profession undermined its reputation and public confidence in it.

We saw little evidence from Mr Liburd of insight or understanding into the seriousness of his misconduct. In view of the seriousness of Mr Liburd's conduct, which included dishonesty, the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to protect the public and maintain public confidence in the profession. Nor would they uphold proper standards of conduct.

Mr Liburd's behaviour was fundamentally incompatible with his remaining on the student register of ACCA. The appropriate and proportionate sanction is that he be removed from the student register. Any lesser sanction would not preserve the integrity of ACCA's exam system and the reputation of, and the maintenance of public confidence in, the accountancy profession.

This order shall take effect from the date of the expiry of the appeal period.

### **Chair**

Now I turn to the costs. The Committee received a costs schedule in which ACCA claimed costs of £9,548. Mr Liburd provided comprehensive details of his financial means and the financial means of his immediate family. It was plain that he had no means to pay the level of costs sought by ACCA.

The Committee considered that it was appropriate to make an award of costs in this case in favour of ACCA. It considered it appropriate to make a significant reduction to reflect Mr Liburd's very limited means. The Committee was satisfied that the sum of £100.00 was reasonable, appropriate, and proportionate in this case. Accordingly, it ordered that Mr Liburd pay ACCA's costs in the amount of £100.00.

### **Chair**

Thank you very much everyone. Mr Liburd, thank you for your attendance; that concludes today's proceedings.