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HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	**Ms Nihala N**
Heard on:	**Friday, 19 September 2025**
Location:	**Remotely via Microsoft Teams**
Committee:	**Ms Ilana Tessler (Chair)** **Mr Trevor Faulkner (Accountant)** **Prof Roger Woods (Lay)**
Legal Adviser:	**Ms Giovanna Palmiero (Legal Adviser)**
Persons present and capacity:	**Mr Mazharul Mustafa (ACCA Case Presenter)** **Ms Aimee Murphy (Hearings Officer)** **Mrs Salila Vipinachandran (Interpreter)**
Observers:	**Jamy Kuang**
Summary	**Reprimand**
Costs:	**£30**

INTRODUCTION

1. The Disciplinary Committee ("the Committee") convened to hear allegations of misconduct against Ms Nihala N (Ms Nihala).

2. Mr Mazharul Mustafa (Mr Mustafa) presented the case on behalf of the ACCA.

3. Ms Nihala attended without representation. The interpreter, Mrs Salila Vipinachandran, was in attendance to assist Ms Nihala.

4. The Committee asked Ms Nihala how she wished to be addressed as there was some confusion as to her full name. During correspondence with ACCA Ms Nihala had referred to herself as "Ms Nihala Nazar". Ms Nihala confirmed that she should be referred to as Ms Nihala. The student's registered details were in the name of Ms Nihala N.

5. The Committee had confirmed that it was not aware of any conflicts of interest in relation to the case.

6. 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.

7. The hearing was conducted remotely via Microsoft Teams.

8. The Committee was provided with, and considered in advance, the following documents:

   (i) A Report of Disciplinary Allegations Bundle with pages numbered 1-91;

   (ii) A Service Bundle with pages numbered 1-24;

   (iii) Tabled Additionals Bundle pages numbered 1-5;

   (iv) Video 2025.01.22-5538372.

(v) Two Cost Schedules were provided to the Committee at the sanction stage.

PRELIMINARY APPLICATIONS

PUBLIC HEARING

9. The Committee had regard to the Case Management Form (CMF) which had been completed and submitted to ACCA by Ms Nihala in August 2025. Ms Nihala had ticked the box requesting that she wished for the hearing to be held entirely in private. The CMF stated:

"*I wish my case to be heard in private since I believe that the situation of the matter are personal in nature and if heard in public could affect my career*."

This application was formally repeated by Ms Nihala orally before the Committee.

10. Mr Mustafa submitted that under Regulation 11(1)(a) the starting point was that all hearings should be held in public, unless the circumstances of the case outweigh the public interest in holding the hearing in public. He submitted that the application made by Ms Nihala does not meet this criterion. Mr Mustafa further stated that if there were matters of health or sensitive personal information, then these parts, can be held in private.

11. The Committee was aware that they must be satisfied that there should be exceptional circumstances which outweigh the public interest in the hearing being open to the public before acceding to any application for a hearing to proceed in private. There is a non-exhaustive list of examples which would amount to exceptional circumstances which it had regard to. None of the examples in this list applied to the circumstances of this case.

12. The Committee found that, the reasons forwarded by Ms Nihala in her application did not amount to exceptional circumstances which outweighed the public interest in the hearing being open to the public or would lead the Committee to consider holding the proceedings in private. The Committee

therefore refused the application to conduct the hearing in private but reminded her that any matters pertaining to her health or other sensitive matters could be considered in private.

ALLEGATIONS

13. Ms Nihala N, a student of the Association of Chartered Certified Accountants ('ACCA'):

1. a) During an on-demand remotely invigilated AAA examination held on 09 December 2024:

(i) Had on her desk and/or used an unauthorised item, namely a mobile phone, during the exam, contrary to Exam Regulation 5; and/or: ADMITTED and FOUND PROVED

(ii) Failed to comply with the Exam Guidelines to “move mobile phones out of arm’s reach” and/or by having a mobile phone on her desk during the exam, contrary to Exam Regulation 1; and/or: DENIED

(iii) Failed to comply promptly or at all with the Proctor’s instructions to “remove away” the mobile phone and/or to put it on silent mode, contrary to Exam Regulation 2. DENIED

b) Breached Exam Regulation 3 by attempting to mislead or provide false information to the exam proctor when asked about the said unauthorised item. DENIED

2. The conduct referred to in Allegation 1 above, or any of it, was:

a) Dishonest, in that Ms Nihala intended to gain an unfair advantage in the exam attempt and/or to assist others in the exam and/or a future exam and/or to mislead or provide false information to the proctor; or in the alternative: DENIED

b) Such conduct demonstrates a failure to act with integrity. DENIED

3. By reason of any or all of her conduct, Ms Nihala 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 the allegations above

ACCEPTED ADMISSION

14. The Committee accepted Ms Nihala's admission to Allegation 1(a) (i) and found that Allegation proved. The remaining Allegations were formally denied and proceeded with by ACCA.

BRIEF BACKGROUND

15. Ms Nihala became an ACCA registered student on 15 July 2022.

16. A referral was made to ACCA's Professional Conduct Department in respect of irregular conduct identified by a proctor during the on-demand remotely invigilated AAA examination held on 09 December 2024. From a review of the exam video footage, the student has an unauthorised item in her possession, namely a mobile phone.

17. The key incidents in the video footage of Ms Nihala's exam are noted as follows:

- The student goes through the identification process successfully.

- The chat log shows at 00:04:29 the student did a camera pan as requested. What looks like the student's mobile phone can be seen placed within arm's reach of the student's right arm during the camera pan.

- The Proctor writes in the Chat box: "*mam, could you put your phone on silent mode and remove it away with your ID card*?"

- Ms Nihala responded: ”*yes I have done it*”.

18. Upon reviewing of the video footage, it appears the student does not follow this instruction.

19. Further key points in the exam video footage are as follows:

    - The exam is shown to have launched at 0:08:59 of the video recording.

    - At 0:09:11, 0:09:15, 0:09:41, the student can be seen looking to her right.

    - At 0:10:22 and 0:11:22, 0:12:04 and 0:13:15, 0:24:12 and 0:24:57, 0:26:41 and 0:28:45, 0:29:15 and 0:31:15, 0:33:30 and 0:36:15, 0:37:42 and 0:38:20, 0:38:30 and 0:40:15, 0:39:27 and 0:43:40, 0:44:31 and 0:45:15, 0:50:47 and 0:54:00, 01:01:15 and 01:02:15, 01:05:11 and 01:05:29, 01:06:24 and 01:09:30, 01:11:34 and 01:13:13 the student continues to look to her right side.

    - At 01:13:18 the student speaks to the proctor.

    - At 01:13:40 the student moves off screen to their left and gestures downwards and then moves their right hand and body off to the right before showing the right side of her desk and what looks like a phone and calculator can be seen still within arm’s reach.

    - At 01:16:50 after the proctor’s instruction, the student picks up the phone next to her, which is within arm’s reach and drops the phone on the bed behind her.

    - At 1:27:53 she can be heard speaking in a different language. A third party can be heard responding and part of their clothing can briefly be seen. The student then picks up their phone and speaks to someone in a different language. She then hangs up and continues to try to reach someone.

- At 1:43:58 the exam was revoked and the exam video ended shortly after.

20. On 11 February 2025 the Investigation Department emailed the student and asked for the student's comments regarding her appearing to use a mobile phone during the exam.

21. On 16 February 2025 Ms Nihala responded stating;

"*I am writing to sincerely clarify the concerns raised regarding my recent remote exam session. Please find my response attached for your kind review.*
1. I had in fact put my phone on silent mode, but instead of fully silent mode it was accidentally put in vibration mode and it was out of my arms reach which was kept on the right end corner of my table. My phone was kept out of my arms reach and it was out of the stretch area.
2. My phone was not on my lap or anywhere within my immediate reach; it was kept on the right-hand side of my table, completely out of my stretch area. In my previous remote exams, I have placed my phone in the same position, ensuring it was out of my reach. When the invigilator attempted to connect with me before releasing the exam on my laptop, the call was unclear, so they contacted me via my mobile. I sincerely request you to review the footage from all my previous remote exams. I have always adhered to the exam rules and regulations and have never engaged in any inappropriate or illegal actions.
3. No. Even though I got distracted, I did not try to physically touch the phone.
4. Yes. As explained previously to the ACCA team as well as in my email, I had got distracted during the exam when my phone was kept in vibration mode instead of silent mode. So my eyesight went towards the right hand side.
5. No.I had placed my mobile phone out of my arm's reach. When the proctor asked me to remove the phone from the table space, I respectfully complied and placed it at the back of my chair, where my bed is located. The proctor witnessed this and permitted me to continue my exam.
6. I sincerely apologize for what happened. It was my mother who entered the room, unaware of the exam rules. As I was speaking to the proctor regarding the issue, she overheard the conversation from outside the room and, out of concern, stepped inside in a hurry. The moment I saw her enter, I immediately asked her to leave, knowing that no third party is allowed in the room before the session ends.

7. My mother had only stepped in to ask what had happened. I immediately instructed her to leave the room, fully understanding that third parties are not allowed before the exam concludes. I assured her that I would explain everything later.

8. The person I contacted was my tutor for the subject. The proctor had asked me to contact ACCA to explain the situation, but I was struggling to connect with the ACCA team. Despite informing the proctor about the connection issues, I was persistently instructed to contact ACCA before being allowed to continue the exam. Since nearly 30 minutes of my exam time had already passed, I sought my tutor's help to obtain a valid ACCA contact number. Unfortunately, even after trying the provided number, I was unable to connect. When I informed the proctor about this, the exam session was ended

9.Yes Ma'am. I have read and understood the exam guidelines prior to the exam. I had already written the remote invigilated exam a couple of times. In my previous exam, there was no misconduct or any issues raised by the ACCA team. By considering this as a genuine error from my side, I did understand and try to rectify the mistake and I will not try to repeat the mistake again.

10. I can confidently say that I did not commit any act of misconduct against ACCA's examination rules. It was a genuine error. As instructed by my proctor, I contacted ACCA after the session ended, with the help of my tutor, to explain the situation in detail. After providing clarification, the officer I spoke with informed me that my exam had been cancelled. Since the system check for my remote exam was completed successfully, they have kindly processed a refund for the exam fee. I acknowledge that my eyesight was directed towards the right-hand corner due to my phone vibrating. However, I have always adhered to ACCA's rules, which can be verified through previous exam footage. I sincerely regret this issue and humbly seek your understanding and forgiveness. I assure you that I will be more cautious in the future and will fully comply with all examination regulations".

ACCA WRITTEN AND ORAL SUBMISSIONS

22. ACCA made written submissions that the allegations referred to above are capable of proof by reference to the evidence in the video footage and documents in the evidence bundle.

Dishonesty

23. The case of Ivey v Genting Casinos [2017] UKSC 67 at para 74 provided the following guidance as to the meaning of dishonesty:

"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."

24. The concerns arise from the fact that Ms. Nihala had a mobile phone on her exam desk, and it was not kept out of arm's reach. As stated above, a careful review of the exam footage shows that Ms Nihala glanced to the right in the direction of the phone at numerous points in the exam; not just at the beginning of the exam but also at least an hour into it. Ms Nihala told the proctor that she received a "notification" during the exam but ACCA submits that doesn't account for the repeated and numerous instances of her looking in the direction of the mobile phone during the exam.

25. Given the facts of this case it will be assumed by virtue of Exam Regulation that Ms Nihala intended to use the unauthorised item to gain an unfair advantage for herself or others in the exam and/or a future exam; it will be for Miss Nihala to prove that she did not intend to use the 'unauthorised item' to gain an unfair advantage for herself or others, in the exam and/or a future exam. Further, Ms Nihala appears not to have removed the mobile phone from her desk when

asked by the Proctor to do so, and despite her telling the Proctor that she had done so.

26. It is evident from the exam footage that when the Proctor intervenes at about 1:14:53 and requests a room pan, the mobile phone remains on the desk, still not out of arm's reach. Moreover, Ms Nihala denied looking over to the right at the mobile phone when questioned about it by the Proctor.

27. ACCA submits that such conduct amounts to dishonesty. Ms Nihala was clearly aware of the Exam Regulations and Guidelines yet deliberately flouted them and ignored the Proctor's instructions, to gain an unfair advantage.

Integrity

28. In Wingate and Evans v The Solicitors Regulation Authority [2018] EWCA Civ 366, the Court of Appeal addressed what was required in a professional disciplinary context by the standard of integrity. At paras 95-97, Jackson LJ expressed the matter in a way that applied to regulated professions generally and said this:

"95. Let me now turn to integrity. As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty… Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members… The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards."

ACCA submits that any or all of Ms Nihala's conduct as set out in the allegations above, demonstrates in the alternative a failure to act with integrity, based on the same facts as referred to above.

Misconduct

29. In order for Miss Nihala's conduct to amount to a breach of bye-law 8(a)(i), it must be found to amount to misconduct. Bye-law 8(a)(i), 8(c) and 8(d) refer to and partially define misconduct. Bye-law 8(c) states that "for the purposes of bye-law 8(a), misconduct includes (but is not confined to) any act or omission which brings, or is likely to bring, discredit to the individual or relevant firm or to the Association or to the accountancy profession". Bye-law 8(d) provides that when assessing the conduct in question, regard may be had to the following:

"(i) whether an act or omission, which of itself may not amount to misconduct, has taken place on more than one occasion, such that together the acts or omissions may amount to misconduct; whether the acts or omissions have amounted to or involved dishonesty on the part of the individual or relevant firm in question; the nature, extent or degree of a breach of any code of practice, ethical or technical, adopted by the Council, and to any regulation affecting members, relevant firms or registered students laid down or approved by Council."

30. In Roylance v General Medical Council [2001] 1 AC 311, at para. 38, the court held that:

"…the meaning of this term is of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety in any given case may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances."

31. For a Committee to conclude that the facts found proved, amount to misconduct, the Committee must be satisfied that the conduct is serious. Misconduct is a matter for the Disciplinary Committee's professional judgment.

32. ACCA submits that if any or all of the facts set out in the Allegations are found proved, Ms Nihala acted in a manner which brings discredit to herself, to ACCA and to the accountancy profession. Accordingly, Ms Nihala's conduct amounts to misconduct pursuant to bye-law 8(a)(i).

33. Mr Mustafa supplemented the written submissions with oral submissions to the Committee. He stated that in relation to Ms Nihala's admission to Allegation 1(a)(i), Ms Nihala had admitted that she had on her desk an unauthorised item, her phone, which is in breach of Exam Regulation 5. It must therefore automatically follow that Ms Nihala is guilty of Allegation 1(a)(ii), in that she failed to follow exam guidelines, because she admitted to having on her desk a mobile phone in breach of Exam Regulation 1, and failed to adhere to exam guidelines at all times.

34. Further to this, there is evidence in the chat and call during the exam between Ms Nihala and the proctor to further support Allegation 1(a)(ii) in that Ms Nihala breached the Exam Guidelines by failing to "move the mobile phone out of arm's reach", which is linked to Allegation 1(a)(iii)

35. Mr Mustafa submitted that in relation to Allegation 1(a) (iii), Ms Nihala had failed to comply with the proctor's instructions contrary to Exam Regulation 2, by failing to move the phone out of arm's reach and/or place it on silent mode, and the evidence in the chat and call during the exam between Ms Nihala and the proctor supported this allegation.

36. Mr Mustafa referred the Committee to certain time stamps (ts) from the recording of the exam video, as evidence to support the allegation. He submitted that even before the exam was launched at ts 5.20 the proctor asked Ms Nihala to do a 360-degree room pan which Ms Nihala complied with. During this, the proctor spotted the mobile phone on her desk, and as a result via the chat box at ts 5.31 the proctor, asked Ms Nihala to put her phone on silent and to move it away. At ts 7.33.02 Ms Nihala replied by saying, "yes I have done it". At ts 7.33.23 the proctor reminds Ms Nihala to put the phone on silent and out of arm's reach. At ts 7.33.51 Ms N replies, "yes all fine".

37. Further, at 01 : 13 : 18 Ms Nihala and the proctor start a conversation, where the proctor asked where her phone was and the response, was that it was within arm's reach.

38. In relation to Allegation 1(b) Mr Mustafa submitted that Ms Nihala had breached Exam Regulation 3 by attempting to mislead or provide false information to the

proctor when asked about the phone, the unauthorised item. Mr Mustafa stated that Ms Nihala responded to this allegation by stating that her phone received a call, and the phone had been placed on vibrate mode, so she admitted to looking at her phone, and cancelled the call. Further Ms Nihala refers to a single call making her look to her phone, but the evidence shows that she glanced towards her right on 30 occasions the inference being it was not simply a single phone call as this cannot account for looking to her right on 30 occasions.

39. Mr Mustafa referred the Committee to the chat box conversation where the proctor stated: “You were looking at your phone during the exam, I saw it.” Ms Nihala responds “no sir”. The proctor challenges her response, and Ms Nihala confirms that she was not looking to her right.

40. Further in this chat Ms Nihala confirms that her phone was on the table and in her arm’s reach. She goes on to say: “My phone was ringing, it was on silent mode… Just cancelled the call”

41. Mr Mustafa reminded the Committee of the significance of Ms Nihala’s admission to Allegation 1(a) (i), in that she had breached exam regulation 5(a) and 5(b) and therefore the burden of proof is reversed and that it was for Ms Nihala to prove that she did not have the unauthorised item to gain an unfair advantage. Exam Regulation 5 (a) and (b) and reverse burden of proof in Exam Regulation 6(b) prompts the assumption that the test taker intended to gain an unfair advantage in the exam. In subsequent disciplinary proceedings the responsibility would rest on the student to prove that they did not intend to use the device to gain an unfair advantage

42. In relation to Allegation 2(a) dishonesty, Mr Mustafa stated that the acts in Allegation 1 (a) and (b) were dishonest and there were two limbs to this allegation. Firstly, Ms Nihala knew that she had a mobile phone on her desk and that she was using it and that in having it on her desk and/or using it, she was gaining an unfair advantage or intended to do so, and it would have been obvious to her that she was acting dishonestly. Secondly that Ms Nihala would have known she was providing misleading information to the proctor and that she was acting dishonestly in doing so.

43. Mr Mustafa submitted that the innocent explanation provided by Ms Nihala does not discharge the reverse burden of proof, and that there are inconsistencies in her account and the innocent explanations forwarded are not credible.

44. In relation to the second limb of dishonesty, Mr Mustafa submitted that by the standards of ordinary decent people, they would consider that Ms Nihala engaged in malpractice and acted dishonestly.

45. Integrity is pleaded as an alternative to that of dishonesty.

46. It was further submitted that Allegation 3 provided two alternatives in relation to Misconduct. Breaches of the exam regulations, acting dishonestly or lacking integrity would surely be judged as serious and bringing discredit upon Ms Nihala and the ACCA. This action undermines the exam process and the profession. As an alternative, breaching Exam Regulation 1,2,3 and 5 would render Ms Nihala liable to disciplinary action under the Byelaws.

MS NIHALA'S RESPONSE, EVIDENCE AND SUBMISSIONS

47. Further to Ms Nihala's email received by ACCA on 16 February 2025, noted above, a further email was sent by her to ACCA on the 6 March 2025 which stated:

"1. *When the proctor inquired about my phone, I sincerely did my best to correctly indicate its position. It was placed on the right side of my desk, outside of arm's reach. However I understand that there may have been some misunderstanding during our conversation, possibly due to interruptions during the call. I deeply regret any confusions caused and I assure you that I have no intentions of violating any examination rules.*

I would like to also mention that I have completed 11 out of 13 ACCA papers, out of which 2 were remote-invigilated exams. Throughout my ACCA journey, I have always strived to uphold the highest standards of integrity and have never attempted to gain an unfair advantage in any of my exams. However, I deeply regret the mistake I made in the last exam session. It was an unintentional error on my part, and I take full responsibility for it. I wholeheartedly seek your

forgiveness. As I am now at the final stage of my qualification, I earnestly request an opportunity to complete it.

I assure you that I have learned from this experience, and I will be fully committed to complying with all ACCA regulations in the future. I sincerely hope for your understanding and a chance to rectify my mistake."

2. The conversation between Person A FCCA and myself took place in our native language, [PRIVATE]*, as it is our mother tongue. My tutor is also* [PRIVATE]*, and it was a natural way for us to communicate. I spoke with them for their guidance as I panicked and was under stress and I wanted their input. They advised me to talk to ACCA and gave me the ACCA India number.*

48. In a further email on the 16 April 2025 from Ms Nihala, she stated:

"*Dear ACCA Team,*

I am writing to express my sincere apologies for the incident that occurred during my remotely invigilated AAA examination on December 9, 2024. I understand that having my mobile phone within reach during the exam was a violation of ACCA's Exam Regulations and Guidelines, and I deeply regret my actions.

Please believe me when I say that there was no intention of malpractice on my part. I acknowledge that I made a mistake in not ensuring my phone was completely out of reach, and I take full responsibility for this error.

As the report indicates, I have been a registered ACCA student since July 15, 2022, and have successfully completed 11 papers. I am nearing the completion of my ACCA qualification, and I am truly concerned about the potential impact of this incident on my future.

I have always strived to adhere to ACCA's rules and regulations throughout my studies. I respectfully ask that you consider my overall academic record and my sincere remorse as you review this matter. I promise to you if given an opportunity I will not repeat the same mistake again. I am committed to

upholding the highest standards of integrity and assure you that I have learned a valuable lesson from this experience.

I humbly request that you consider my situation with leniency and allow me to continue pursuing my ACCA qualification. Thank you for your time and consideration.

Sincerely,

Ms.Nihala.N."

49. In the CMF completed and sent by Ms Nihala to ACCA in August 2025, Ms Nihala stated:

"*I do admit that my mobile phone was on my desk and it was kept out of my reach, further as per the instructions of the proctor I had kept it on my bed. My intentions was not to do any malpractice, but due to gravity of the issue, I got panicked and phoned my tutor which I admit as a mistake, but I do not had any wrong intentions to perform any misconduct during my exams. Further due to panic, I would have not listened to the proctor due to language dialect and I was not clear of his instructions well*."

50. In addition to her written submissions, Ms Nihala gave evidence before the Committee. Ms Nihala admitted she had her phone on her desk but she denied that the phone was within easy reach to her and that it was not in arm's length. She explained that when the proctor asked her about her phone, she panicked and said that it was within arm's reach, but this was a mistake.

51. Ms Nihala stated that when the proctor had asked her to show 360-degree pan of the room, it did look like the phone was close to her, but it was not.

52. In relation to the third allegation, when the proctor asked Ms Nihala to remove the phone, she believed that she had complied with this, as she had placed it beyond arm's length. When the proctor asked her about her phone, she was panicking and said that it was within arm's reach but confirmed that this was not the case.

53. Ms Nihala believed that she had put the phone on silent mode, but unfortunately it went onto vibrate mode, so every time there was a notification, the phone vibrated and distracted her, which caused her to look towards the phone.

54. Ms Nihala denied trying to gain an unfair advantage during the remote exam and had not acted in a dishonest manner. She accepted her mistake of having the phone on the desk and that it was not on silent mode, which was entirely her fault, but she never tried to gain any unfair advantage during the exam and did not use the phone during the exam.

55. Ms Nihala stated that she used the phone to contact a third party when the proctor told her she had to contact the ACCA before she could complete the exam. She called her tutor for advice, which is shown on the exam recording. On explaining the situation to them, they informed her that they would cancel the exam and arrange another exam and that there should be no problems.

56. Mr Mustafa cross examined Ms Nihala. It was clarified that Ms Nihala accepted that she did glance at her phone several times, but she did not touch the phone physically. Ms Nihala was referred to the exam video at ts 5.31 and the chat box, where the proctor asked Ms Nihala to place the phone away and place on silent and the reply that she had done so. Ms Nihala accepted this but stated that unfortunately she believed the phone was on silent, but it was on vibrate mode. She accepted that she was given the instruction twice by the Proctor, in the chat box conversation.

57. Mr Mustafa referred Ms Nihala to the CMF completed by her and pointed out that the explanation given on the CMF was different, where she wrote she was not clear on the proctor's instructions due to dialect difficulty. Ms Nihala responded by saying that she meant that she didn't realise the phone had to be fully removed, as it was out of arm's reach. Ms Nihala had sat two previous remote exams and had the phone on the desk out of arm's reach on both those occasions.

58. The still of Ms Nihala's desk was shown to her and it was clarified by Ms Nihala that the phone was on a stand and beside it was a scientific calculator and its

cover. These were next to the laptop charger. Ms Nihla stated she did not need to use the calculator during the exam. Mr Mustafa put to Ms Nihala that the laptop would have been placed back, next to the calculator and phone due to the laptop charger being next to the phone. She stated that it would have been placed further away. The laptop was being used as a 360-degree pan of the room and it looked closer than it was. Mr Mustafa made the point that the laptop would have been re-positioned next to the calculator and charger and that then the phone would have been in arm's reach.

59. Mr Mustafa referred Ms Nihala to the still from the exam video of Ms Nihala picking up the phone and placing it on the bed behind her and made the point that she had picked up the phone whilst sitting at the desk.

60. Ms Nihala said she had read the exam guidelines, but when referred to them by Mr Mustafa, she did not realise that the phone was prohibited from being on the desk and admitted it was her mistake.

61. Ms Nihala reiterated that when the Proctor asked her where her phone was, she panicked and was wrong when she responded, "it at hands reach" and "its within my arms reach sir" instead of saying that it was out of my arm's reach.

62. Mr Mustafa referred Ms Nihala to her responses to being accused of looking to her right by the proctor:

"Yes … it was a reflection of my phone, the phone was ringing! Just cancelled the call. I was not looking on that."

Mr Mustafa stated that to cancel a call Ms Nihala would have had to touch the phone. Ms Nihala stated that she simply did not answer the call, and that she did not physically touch the phone.

63. Mr Mustafa put to Ms Nihala that she denied looking at her phone to the proctor during the exam and that today she accepts that she looked at her phone on a number of occasions, so she had clearly misinformed the proctor at the time. Ms Nihala responded that she had meant that she was not trying to gain an unfair advantage by looking at her phone and had glanced at the phone

whenever it vibrated. She told the Committee that it vibrated when WhatsApp messages arrived or when news flashes were received. She said that the phone screen was off. Mr Mustafa put to Ms Nihala that in the chat log Ms Nihala stated to the proctor that her phone was on silent mode and that a call came in and she cancelled the call, but that there was no mention of notifications or that the phone was on vibrate mode. Ms Nihala was seen looking to her right on 30 occasions. Mr Mustafa asked whether she could possibly have received 30 notifications in this time period or was the real reason she was looking at her phone due to trying to gain an unfair advantage? Ms Nihala responded by asking, how could she have gained an unfair advantage and that the exam was about applying the theory to the questions.

64. The Committee asked Mr Mustafa to clarify the rules around phones not being allowed on the desk.

65. The Committee asked several questions of Ms Nihala at the end of cross examination. She confirmed that the exam was the Advanced Audit and Assurance exam that day. She had previously sat the paper that came before this exam and had passed it. The style of the exam was a mix of short questions and 3 scenario questions and within each scenario there were a number of different questions. The questions were a mixture of stating the theory and applying it to the scenario.

66. Ms Nihala confirmed to the Committee that she did not have a clear idea of the type of notifications that she was receiving but remembered some WhatsApp notifications. After speaking to ACCA India, they said that there shouldn't be any problems, so she did not think that she needed to record any further information about the notifications or call.

67. Ms Nihala confirmed that the conversation with the proctor was in English and that she did not have access to an interpreter.

68. There was no re-examination by Mr Mustafa and both parties gave closing submissions summarising their evidence.

DECISION ON FACTS/ALLEGATION AND REASONS

69. The Committee considered ACCA's bundle of evidence and the written representations which were supplemented by Mr Mustafa orally and the oral evidence of Ms Nihala. The Committee considered the legal advice from the Legal Adviser, which it accepted.

70. The Committee was aware that the burden of proving the facts was on ACCA. Ms Nihala did not have to prove anything, and the charges could only be found proved if the Committee was satisfied on the balance of probabilities.

71. However, the Committee had been advised specifically by the Legal Advisor in relation to the reverse burden of proof created under Examination Regulation 6(b), and to balance this with the presumption of innocence. The standard of proof on this reverse burden was also on a balance of probabilities.

72. The Committee noted that Ms Nihala had admitted Allegation 1(a)(i), to having her phone on her desk and that this admission would be used in determining the remaining Allegations.

Allegation 1(a) (ii)

73. The Committee were mindful of the fact that the second limb of this Allegation was couched in such a way, that Ms Nihala's admission to Allegation 1(a)(i) meant that she was automatically guilty of this Allegation, by simply having a mobile phone on her desk during the exam, contrary to Exam Regulation 1.

74. The Committed had therefore to find that this allegation was proven on the second limb of the allegation.

Allegation 1(a)(iii)

75. The Committee was mindful that this allegation also had two limbs. Ms Nihala had admitted in her own evidence that she had failed to place the mobile phone onto silent mode and had placed it onto vibrate mode. This admission therefore

meant that Ms Nihala had failed to comply promptly or at all with the proctor's instructions to "put it on silent mode", contrary to Exam Regulation 2.

76. The Committee therefore found this Allegation proved on this limb alone.

77. The Committee did not find the first limb of this Allegation proved, as the ACCA had not discharged its burden of proof. There was no direct evidence that Ms Nihala's phone was not out of arm's reach and ACCA relied on circumstantial evidence which Ms Nihala had refuted in her evidence.

78. The Committee found that there was the possibility of miscommunication between the proctor and Ms Nihala as [PRIVATE] was not her first language, which could have led to misunderstanding. It was also mindful that undertaking an exam was a stressful time and due to this she may well not have explained herself well in this situation. It accepted Ms Nihala's evidence for the miscommunication with the proctor about whether the phone was out of arm's reach.

Allegation 1(b)

79. The Committee had to determine whether Ms Nihala had breached Exam Regulation 3 by attempting to mislead or provide false information to the exam proctor when asked about the said unauthorised item, by not removing the phone and denying that she was glancing to her right.

80. It was noted by the Committee, that when the 360-degree pan of the room was undertaken, Ms Nihala had not misled the proctor in relation to the phone as the proctor asked if it was out of arm's reach rather than whether it had been removed from her desk. The Committee concluded that there was an element of confusion, as to whether the phone should be removed from the desk or be placed out of arm's reach on the desk.

81. The Committee had already accepted that Ms Nihala had been mistaken as to what she told the proctor about the phone being out of arm's reach due to the circumstances and language difficulties.

82. It was clear to the Committee that the proctor did challenge Ms Nihala as to why she was continuously looking to her right side during the exam, and that Ms Nihala initially denied this to the proctor, but when challenged further by the proctor she explained that it was a reflection from the phone, and later that there was an incoming call. Ms Nihala confirmed at the hearing that she was being distracted by numerous notifications being received, due to the fact that her phone was on vibrate mode rather than silent mode. The Committee concluded that Ms Nihala had misled the proctor regarding the fact that the phone was on silent mode and that she now accepts being distracted by notifications on her phone and was therefore looking at her phone.

83. The Committee therefore found Allegation 1(b) proved, on basis that Ms Nihala sought to mislead the proctor by admitting in her oral evidence, that she was distracted by notifications on her phone, but at the time denying this.

Allegation 2 (a) Dishonesty

84. The Committee had regard to the fact that Ms Nihala, by accepting that she had her phone on her desk during the exam, had breached Exam Regulations 1, 2 and 5, however she denied that the phone was within arm's reach or she used the phone during the exam, and did not intend to gain any unfair advantage by glancing at her phone. Ms Nihala did admit in her evidence to looking to her right towards her phone, but that this was due to the fact that her phone was vibrating due to incoming notification which distracted her.

85. The Committee also noted that they had found as a matter of fact that Ms Nihala had misled the proctor by denying that she was looking to her right side during the exam.

86. Considering the findings of fact in respect of these Allegations, the Committee had to determine whether Ms Nihala intended to gain an unfair advantage in her exam attempt and/or to assist others in the exam and/or a future exam and/or to mislead or provide false information to the proctor and that these motives were dishonest.

87. ACCA stated that Ms Nihala knew that she had a mobile phone on her desk and that she was using it or intended to use it to gain an unfair advantage, and secondly that Ms Nihala would have known she was providing misleading information to the proctor and that she was acting dishonestly in doing so.

88. The Committee noted Examination Regulation 6(b):

"*6.(a) If you breach exam regulation 4 and the 'unauthorised materials' are relevant to the syllabus being examined; it will be assumed that you intended to use them to gain an unfair advantage in the exam. In any subsequent disciplinary proceedings, you will have to prove that you did not intend to use the unauthorised materials to gain an unfair advantage in the exam."*

89. The onus was therefore upon Ms Nihala to show that she *"did not intend to use the unauthorised materials to gain an unfair advantage in the exam*."

90. Ms Nihala had given evidence before the Committee, which had been tested under cross-examination by Mr Mustafa and therefore this carried substantial weight in discharging the reverse burden.

91. Ms Nihala accepted that she was aware of the exam regulations and guidance but when directed to the fact that she was not allowed to have the phone on the desk, she admitted that this was her mistake and was unaware of this. The Committee felt that this was an unclear issue, as the proctor kept referring to the phone being out of arm's reach to Ms Nihala, which is different from removing it from her desk entirely. There was therefore an element of confusion as to what was allowed.

92. The Committee has previously accepted Ms Nihala's evidence in relation to the confusion in telling the proctor about whether the phone was within arm's reach, and this was as a result of her misunderstanding and anxiety during the exam process, and that there was no direct proof that it was indeed within arm's reach.

93. The Committee had regard to the exam recording which showed that Ms Nihala was glancing right towards her phone. During the room pan, the phone was

noted as being to her right. It was noted that Ms Nihala's head did not physically turn or move towards her phone at any point during the exam. Her eyes simply glanced over towards the phone. The Committee had found that this recording was consistent with Ms Nihala's evidence that she was being distracted by the phone vibrations and was the reason why she glanced to her phone. Ms Nihala's evidence was therefore credible.

94. The Committee found that Ms Nihala had inadvertently allowed the phone to remain on her desk and that she was glancing and not looking at her phone, and that this was not a deliberate act but an inadvertent reaction to the vibrating phone.

95. The Committee believed that for the reasons above Ms Nihala had discharged the evidential burden of proof placed on her and that she had shown on the balance of probabilities that she was not using her phone to gain an unfair advantage.

96. Regardless of this fact, the Committee still had to determine whether Ms Nihala was being dishonest on the evidence of the ACCA and facts proved.

97. The Committee considered on the facts that they had found proved, whether Ms Nihala had acted dishonestly in light of the test for dishonesty, as set out in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67. It had to consider:

"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."

98. The Committee first had to ask itself on Ms Nihala's subjective view of the acts admitted and found proved, and whether she believed her actions were dishonest and consider if Ms Nihala intended to gain an unfair exam advantage during her ACCA exam.

99. The Committee questioned what was meant by an "unfair advantage". It was clear that the use of a phone during an exam could have placed a student in an

advantageous position and assist in passing the exam.

100. The Committee relied upon its findings in relation to Ms Nihala discharging the reverse burden of proof. The ACCA has used the word “glanced” in its submission. The Committee accepted that Ms Nihala received “notifications” during the exam which accounts for the repeated and numerous instances glancing in the direction of the mobile phone. This does not mean that there is evidence that she was gaining an unfair advantage.

101. The Committee noted that when Ms Nihala was asked the question by Mr Mustafa about this, Ms Nihala responded by asking how she could gain an unfair advantage in that particular exam. It was therefore clear that Ms Nihala did not believe that she was gaining an unfair advantage on the evidence that she gave, and in her own belief was not acting dishonestly

102. When confronted by the proctor regarding Ms Nihala looking right the Committee had found that she did deny looking to her right. However, the Committee concluded that due to the stressful exam situation and [REDACTED] not being Ms Nihala’s first language, this did not amount to dishonesty, in respect of misleading the proctor.

103. The Committee then went on to consider the objective part of the test, and would the facts amount to dishonesty by the *standards of ordinary decent people.*

104. The objective test is to determine if the actions were dishonest by the standards of ordinary, reasonable people. Ms Nihala’s state of mind is only relevant to establish her knowledge of the facts, not whether they believed their actions were dishonest. Therefore, even if someone genuinely believes their actions were justified or not dishonest, dishonesty can still be found proved if ordinary people would consider those actions dishonest.

105. It is clear that on the basis of the facts found by the Committee, that on the standards of ordinary decent people, they would not believe that Ms Nihala was acting dishonestly.

106. There was no clear direct evidence that the phone was being used during the exam. Ms Nihala glancing at the phone was not proof that she was using it to gain an unfair advantage. The miscommunication with the proctor was understandable in the circumstances.

107. The Committee therefore found that ACCA had not discharged its burden of proof in relation Allegation 2(a) on the balance of probabilities, and the Committee found the Allegation of dishonesty not proved.

Allegation 2(b) Integrity

108. Allegation 2(b) was an alternative to dishonesty, which had to be considered as the Committee found that Ms Nihala was not dishonest.

109. The Committee did find that by having the mobile phone on her desk in breach of the exam rule and in misleading the proctor in regard to looking to her right during the exam, Ms Nihala's actions did lack integrity.

110. The Committee noted that society expected a higher standard of behaviour from a professional person. This included students who were undertaking professional exams, to ensure that they were complying with all rules and regulations.

111. The Committee found Allegation 2(b) proved on balance of probabilities.

Allegation 3 Misconduct

112. In relation to Allegation 3, the Committee applied the test for misconduct, as per the case of Roylance v General Medical Council [2001] 1 AC 311, in which it was decided that, '*the meaning of [misconduct] is of general effect, involving some act or Omission which falls short of what would be proper in the circumstances. The standard of propriety in any given case may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances*.".

113. The Committee took into account that Ms Nihala has admitted having the phone

on her desk but found that due to her evidence she did not have it or use it for dishonest intentions but found that she lacked integrity by not following the exam rules and regulations.

114. The Committee concluded that Ms Nihala's actions were not serious in the circumstances and did not fundamentally fall short of the standards required of a professional person. The Committee was satisfied that her actions did not meet the threshold of serious misconduct and so it concluded that she was not guilty of misconduct.

115. However, in the alternative, the Committee found that Ms Nihala was liable to disciplinary action through her admitted and proven breach of the exam regulations under Bye-law 8(a)(iii).

SANCTION AND REASONS

116. In reaching its decision on sanction, the Committee considered the oral submissions made by Mr Mustafa on behalf of ACCA. Mr Mustafa made no submission as to the actual sanction but referred to the Guidance for Disciplinary Sanctions (GDS) and particularly the summary of the general principles. He confirmed that Ms Nihala had no other known previous disciplinary findings.

117. Ms Nihala addressed the Committee on the impact of any sanction. She confirmed that she deeply regretted her actions which were a genuine mistake. She reassured the Committee that she would conduct herself with full integrity in the future and would never make this mistake again.

118. She confirmed that she had undertaken 11 exams out of the 13 required and wished to continue her professional studies, with only 2 papers to complete. She reiterated that she has not been found to be dishonest.

119. Ms Nihala went on to say [PRIVATE] she wished become an ACCA Member so that she could repay their support. If she were to be removed from the student register, then this would impact [PRIVATE].

120. The Committee noted its powers on sanction were those set out in Regulation 13(4) in relation to student members. It had regard to ACCA's Guidance for Disciplinary Sanctions 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.

121. The Committee considered that the conduct in this case was on the lower scale of seriousness. The Committee had regard to Section F of the GDS. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. Acting with integrity is a fundamental requirement of any accountant.

122. The Committee assessed the aggravating and mitigating features:

Aggravating features:

- This was a reckless act due to the positioning of the phone.
- Ms Nihala has been found to lack integrity.
- Ms Nihala's actions had undermined the Integrity of the remote examination process.

Mitigating features:

- There were no previous disciplinary findings against Ms Nihala.
- There was evidence of insight, remorse, apology and reflection.
- Ms Nihala made early admissions to one of the allegations.
- This was an isolated incident.
- There had been no direct loss or impact on the public.

The Committee noted that some of the allegations not admitted by Ms Nihala were not found proved.

123. Given the Committee's view of the seriousness of Ms Nihala's conduct, it was satisfied that the sanction of No Further Action was not appropriate.

124. In considering an Admonishment, the Committee decided that the factors listed in the GDS were present, however the Committee decided that an Admonishment was not a sufficient sanction in all the circumstances of the case as it did not reflect the seriousness of the lack of integrity found.

125. The Committee went onto consider if a Reprimand was sufficient to highlight to the profession and the public the gravity of the proven lack of Integrity. Having regard to the GDS, the Committee noted that a number of the factors were present in Ms Nihala's case such as the period over which the incident took place was short, there has been no or very little adverse consequence and it has not caused material distress, inconvenience or loss. Ms Nihala have made an early admission to having her phone on the desk.

126. Having regard to the circumstances of the allegations and the finding that the seriousness was on the lower level, along with Ms Nihala's remorse and apology, the Committee found that this was the most appropriate and proportionate sanction.

127. The Committee went onto consider the ACCA GDS, on the approach to be taken for considering a Severe Reprimand, and the Committee noted that some of the factors listed in the guidance were present in this case, but there had been evidence of insight and remorse, and the Committee did not consider there to be a significant risk of harm to the public and therefore this was not a proportionate sanction in Ms Nihala's case.

128. The Committee ordered Ms Nihala to be formally Reprimanded.

EFFECTIVE DATE OF ORDER

129. The Committee decided that there were no public interest factors which required the order to have immediate effect.

COSTS AND REASONS

130. ACCA applied for costs in the sum of £7,573.00. The Committee was provided with a schedule of costs. The Committee was satisfied that the costs claimed were appropriate and reasonable.

131. Mr Mustafa reminded the Committee that the Cost Guidance stated that the normal starting position is that cost should be awarded if the allegations were found proved and any reduction as to costs must be supported by evidence of the student member.

132. Ms Nihala provided two statements of means, and one for herself [PRIVATE] which the Committee took into consideration. She stated that the costs requested by ACCA translated to 900,000 rupees, which was impossible for her [PRIVATE] to pay [PRIVATE]. There was therefore a risk of causing Ms Nihala [PRIVATE] if an award of costs in the full amount was made.

133. The Committee had in mind the principle that members against whom an allegation has been proven should pay the reasonable and proportionate cost of ACCA in bringing the case but also balance this with taking into account Ms Nihala's means.

134. Having carefully considered the evidence of Ms Nihala, ACCA's Cost Guidance and heard from the Legal Adviser, the Committee made an order for costs against Ms Nihala in the sum of £30.

Ms Ilana Tessler
Chair
19 September 2025