

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

REASONS FOR DECISION

In the matter of: Miss Deepshika Esha Gungadin

Heard on: Wednesday, 13 November 2019

Location: ACCA, The Adelphi, 1-11 John Adam Street,
London, WC2N 6AU

Committee Mr Maurice Cohen (Chairman)

Mr Arif Kamal (Accountant)

Dr Hazel Bentall (Lay)

Legal Adviser: Ms Valerie Charbit (Legal Adviser)

Persons present

and capacity: Mr Benjamin Jowett (ACCA Case Presenter)

Ms Geraldine Murray (Hearings Officer)

Observers: Mr Colin Childs (Shadow panel member)

PRELIMINARY APPLICATION

1. The Committee convened to consider one allegation, particularised as follows :

Allegation 1

(a) Between 1 January 2018 and 30 November 2018, Miss Deepshika Gungadin, an ACCA member, misappropriated amounts totalling £29,736.69 belonging to Firm A;

(b) Miss Deepshika Gungadin's conduct was

(i) Dishonest, in that Miss Deepshika Gungadin knew that she was acting wrongfully and without lawful excuse in misappropriating £29,736.69 belonging to Firm A; or

(ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2018) in that such conduct demonstrates a failure by Miss Deepshika Gungadin to be straightforward and honest.

(c) By reason of her conduct, Miss Deepshika Gungadin is guilty of misconduct in respect of any or all of the matters set out above at 1(a) or 1(b) pursuant to bye-law 8(a)(i).

2. The Committee had a bundle of papers before it numbering 1-192, and two tabled additional numbering 1-42, and 1-11. It also had a service bundle, numbering 1-28.

3. Miss Gungadin attended the hearing by telephone, but she was not legally represented.

Application for a private hearing

4. Miss Gungadin supplied medical evidence, to support an application that parts of the hearing should be held in private, [Private.]
5. The Committee decided, in accordance with Regulation 11 of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2017 ("the CD Regulations"), that it would not hold a public hearing or publicise only those parts of the Committee hearing and the Committee's decision that dealt with Miss Gungadin's personal health matters. To that limited extent, the Committee acceded to Miss Gungadin's application, in that it was willing to deal with personal health matters privately.

BRIEF BACKGROUND

6. The investigation began following a complaint from Firm A.
7. Miss Gungadin is a member of ACCA and has been since 17 March 2017.
8. Miss Gungadin was employed by Firm A from 2015 until 21 November 2018, most recently as Finance Director.
9. On 13 December 2018, Firm A sought explanations from Miss Gungadin about payments Firm A had made to her, or third parties on her behalf, during 2018, by means of Firm A's payroll and Firm's A company credit card. She paid herself an increased salary over the course of several months, and paid herself a bonus, neither of which was approved by Firm A. The unauthorised payments on Firm A's company credit card related to personal expenses, including flights, a resort, food, fuel, jewellery, hotels, hair and beauty, taxis, clothes and entertainment.

10. On 13 December 2018, Firm A complained to ACCA. It stated that Miss Gungadin was a salaried staff member, and that she was not paid overtime.
11. On 16 December 2018, following Firm A's request, Miss Gungadin repaid £15,274.01 to Firm A.
12. On 1 April 2019, Miss Gungadin admitted to ACCA that she had amended Firm A's payroll amounts, in order to award herself overtime, salary increase and bonus payments. She admitted that she was not authorised to receive those, and that she had abused her position as Firm A's Finance Director.
13. On 7 June 2019, Firm A notified Miss Gungadin that it had discovered further unauthorised payments, to her, or for her personal benefit, amounting to £14,462.68.
14. On 10 June 2019, Miss Gungadin repaid Firm A a further £14,462.68.
15. Miss Gungadin later informed Firm A that she deeply regretted her mistakes, and was sorry for her actions.
16. Miss Gungadin admitted to ACCA that her conduct in relation to Firm A was dishonest, and contrary to the Fundamental Principle of Integrity. [Private]. Miss Gungadin admitted to ACCA that she had behaved unethically.

Admissions

17. Miss Gungadin admitted Allegations 1(a) and 1(b)(i). She specifically admitted that she had acted dishonestly. She further admitted Allegation 1(c), in that she accepted that her actions amounted to misconduct.

18. In accordance with Regulation 12 of the CD Regulations, the Committee found the facts of Allegation 1(a) and Allegation 1(b)(i) proved. The Committee noted that, despite Miss Gungadin's admission to Allegation 1(b)(ii) in her written response to ACCA, this was an alternative to Allegation 1(b)(i) because of the word 'or' as set out in the allegation.
19. The Committee therefore did not accept her admission, or make a finding, in relation to Allegation 1(b)(ii).
20. The Committee decided to hear evidence, despite Miss Gungadin's admission to misconduct, because misconduct was a matter for the Committee's judgement.

MISS GUNGADIN'S EVIDENCE

21. Miss Gungadin stated, in her written response to Firm A, that the increase in pay on the payroll was for overtime hours that she had worked.
22. Miss Gungadin stated that she was originally brought in to work for Firm A in its finance department, but her work expanded to encompass administration, human resources, insurance and GDPR compliance.
23. She said that she resigned in September 2018, with three months' notice. However, her employment was terminated in November 2018, because Firm A had appointed a replacement at that time, and therefore she was not required to work her full notice period.
24. She stated that she had asked Firm A for an increase in her salary, before and after taking money, but she was told that it was not possible at that time, but that she would gain a bonus of £500 if Firm A ended the year in profit.

25. She admitted that her use of the credit card for the airline flights was in relation to a personal trip, and she accepted that the money for those flights was owed to Firm A. She provided evidence to show that Firm A had initially authorised the use of the company credit card to assist her in booking the flights, because of a family emergency, and her need to return to Mauritius quickly.
26. Miss Gungadin produced examples of racist messages she had been made aware of, and also of texts showing that had been authorised to book flights on a company credit card.
27. Miss Gungadin explained that she had returned to Mauritius [Private]. She said she had found it hard to take on the additional responsibilities that Firm A asked her to carry out. She also stated that persons within Firm A were racist about her and others. This had left her feeling that she did not want to continue working with Firm A.
28. Miss Gungadin said she had repaid the money because she made a mistake, and because she regretted her actions. She confirmed that she lacked judgment in making the payments she had made, both in relation to her pay, and on Firm A's credit card. She explained that she had acted in this way due to being bereaved, and because she felt undervalued at the time for the amount of work that she was doing for Firm A.
29. Miss Gungadin reiterated her complaints about bullying and racist behaviour within Firm A, and she stated that the bereavements had affected her [Private].
30. [Private]
31. Miss Gungadin stated that she had worked hard to obtain a first class degree and her ACCA qualification, and that prior to this she had never been dishonest. She stated that since then she had been on a career break to recover mentally. She was now working again

as a Finance Lead, and she explained that without her ACCA qualification she would not be able to continue working in her new job. She assured the Committee that she would never act dishonestly again, and that the experience had caused her to reflect on how she coped with stress and personal matters.

32. Once she paid back the money, after prompting by Firm A, Miss Gungadin had apologised to Firm A. She apologised to the Committee.
33. Miss Gungadin asked the Committee to take into account that she had paid back the money she had dishonestly taken.
34. Miss Gungadin accepted that she had abused the trust of Firm A, and that her actions had brought the profession into disrepute. She also acknowledged that her actions would have cast suspicion on others.
35. Miss Gungadin stated that she was 'deeply regretful' and remorseful, and she would not repeat the same behaviour ever again in the future.

DECISION ON ALLEGATIONS AND REASONS

Allegation 1(c)

36. The Committee exercised its judgement as to whether the facts found proved amounted to misconduct.
37. The Committee noted that Miss A had misappropriated funds amounting to £29,736.69 belonging to Firm A between 1 January 2018 and 30 November 2018, and which Miss Gungadin had repaid to Firm A. The Committee noted that this was a substantial amount of money when compared to her salary.

38. By her own admission, Miss Gungadin knew that by misappropriating monies totalling £29,736.69 belonging to Firm A, she was dishonest, and that her actions would be regarded as dishonest by the standards of ordinary decent people. The Committee was in no doubt that such conduct was dishonest.

39. The Committee further noted that in *Roylance v. General Medical Council (No 2)* [2000] 1 AC 311, at p330, the Privy Council said:

“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances.”

40. The Committee heard evidence from Miss Gungadin about how she came to repeatedly misappropriate money from Firm A. It was satisfied that her conduct had lasted for a period of several months, and that in acting dishonestly any bullying or racist behaviour, any overtime that she worked, and the bereavements she suffered could not excuse her behaviour. Miss Gungadin had now acknowledged that in her evidence.

41. The Committee further noted that, whilst Miss Gungadin stated that she was potentially entitled to a bonus of £500, that in fact the papers before the Committee demonstrated that she had taken a bonus on at least two occasions, one being in the sum of £500 and subsequently £2,000.

42. The Committee was satisfied that, despite the explanations offered by Miss Gungadin, she could have dealt with matters differently, and sought redress elsewhere for her complaints about Firm A.

43. The Committee did not consider that it was part of its remit to decide on whether Firm A bullied, or was racist, towards Miss Gungadin.
44. In the Committee's judgement, the conduct included acting dishonestly, on a large number of occasions, in relation to a credit card and the payroll, and it was satisfied that this amounted to serious misconduct.
45. The Committee was further satisfied that the public would be entitled to expect a finance director to behave honestly, and to not mismanage a firm's accounts for their own benefit. Such conduct was a breach of Firm A's trust; as Miss Gungadin had accepted.
46. The Committee found the conduct also brought discredit on Miss Gungadin, and brought the accountancy profession and ACCA into disrepute.
47. The Committee, therefore, found that Allegation 1(a) and 1(b) amounted to misconduct both individually and cumulatively.
48. Accordingly, the Committee found Allegation 1(c) proved in relation to Allegation 1(a) and 1(b).

SANCTION AND REASONS

49. Miss Gungadin supplied a positive character reference from a previous Finance Director, with whom she had worked closely for three years up to 2018, who said he would not hesitate to employ her again, and he was aware of the allegations. She also supplied a positive character reference from her current employer, where she had been working since June 2019 as a Finance Lead. She said that her current employer was unaware of the allegations.
50. Miss Gungadin asked the Committee to allow her to retain her ACCA membership, which she said meant so much to her.

51. The Committee referred to the Disciplinary Committee's Guidance for Disciplinary Sanctions ("Sanctions Guidance"), with effect from 1 January 2019. It noted that a sanction imposed must demonstrate a considered and proportionate balance between

- a) The public interest (which is not necessarily the same as the interests of the public)
- b) The interests of the ACCA membership as a whole;
- c) The interests of the particular member in the case;
- d) The seriousness of the case; and
- e) The mitigating and aggravating factors in the case.

52. The Committee noted that any interference in a member's professional standing, and ability to practise, must be no more than the minimum necessary to uphold the public interest. The Committee must strike a fair balance between the rights of the relevant person, and the public interest.

53. The Committee noted the following aggravating factors:

- Miss Gungadin's actions amounted to a pattern of misconduct over a period of several months;
- She was working as a finance director, and therefore had breached a position of considerable trust.

54. The Committee noted the following mitigating factors:

- Miss Gungadin had paid back all the money she had taken from Firm A;
- She had no previous disciplinary history;

- She said she would lose her job if she was unable to retain her membership of ACCA;
 - She had admitted the conduct to ACCA, and was fully co-operative.
55. The Committee took into account the positive character references that Miss Gungadin relied upon. It noted that she had sought help in respect of her medical condition.
56. The Committee further noted that Miss Gungadin stated that she would not repeat the same behaviour in the future, and that she said she had behaved out of character.
57. The Committee was satisfied that it was necessary to impose a sanction because of the seriousness of the misconduct; it therefore considered that the misconduct found proved was too serious for it take no further action.
58. The Committee then considered whether the sanction of either an 'admonishment' or 'reprimand' was sufficient. It was satisfied that, because the conduct included dishonesty, such sanctions were insufficient to protect the public interest.
59. The Committee found that Miss Gungadin had behaved deliberately, and disregarded her professional obligations, at the time she committed the misconduct, and that the misconduct took place over several months. It noted that the Sanctions Guidance indicated that an admonishment or reprimand was not suitable for deliberate conduct, or where there was a deliberate disregard for professional obligations.
60. Having heard from Miss Gungadin, the Committee found that she had insight, albeit only partial, because she still explained her actions by referring to her personal and workplace problems at that time. It

was satisfied that she did not wish to behave in the same way in the future, but it could not be satisfied at this early stage after the misconduct had happened, that she would not act similarly again in the future.

61. The Committee was also concerned that Miss Gungadin had not yet disclosed these matters to her current employers, and that her failure to do so, whilst not amounting to any breach of professional rules, demonstrated a lack of awareness in understanding the need to be open and honest with one's employer. However, it was not persuaded that, even having regard to her evidence, there was in this case sufficiently compelling evidence of insight. It took into account that she had no previous disciplinary findings against her, and that she had therefore behaved out of character.
62. The Committee also took into account that Miss Gungadin was remorseful, and had offered a genuine expression of regret.
63. However, the Committee noted that the Sanctions Guidance referred to the fact that for an admonishment or reprimand to be a suitable sanction, the Registrant had to have made early and genuine acceptance that misconduct had been committed. The Committee noted that Miss Gungadin had only made admissions after she had been confronted by Firm A. However, it did note to her credit, that she had made full and early admissions to ACCA, but this was not sufficient for it to determine that the sanctions of admonishment or reprimand were suitable.
64. [Private].
65. The Committee considered whether the sanction of a 'severe reprimand' was appropriate and proportionate. It noted that the Sanctions Guidance indicated such a sanction was appropriate for non-intentional, but reckless conduct. It noted that Miss Gungadin

had a previous good record. It also acknowledged that she had cooperated with ACCA, and that she had some relevant and appropriate references. However, the Committee was not persuaded that this was an isolated incident. The sanctions guidance indicated that a severe reprimand was appropriate if the Committee found most of factors listed under paragraph C4.1 present. However, in this case, the Committee did not find the following factors present and therefore it did not consider that a severe reprimand was the appropriate sanction

- that the misconduct was not intentional, though the member may have acted recklessly;
- insight into failings;
- no repetition of failure/conduct – it was an isolated incident.

66. The Committee decided that the public interest would also not be met if Miss Gungadin was sanctioned to a severe reprimand for such serious misconduct which included repeated dishonesty.
67. The Committee noted that the Sanctions Guidance indicated that exclusion from ACCA's register applied where there was an abuse of trust or dishonesty which continued over a period of time. It noted that her conduct was a serious departure from relevant professional standards.
68. The Committee weighed carefully the submissions made by Miss Gungadin, and whether exclusion from ACCA's register would be a disproportionate sanction. It noted that the Sanctions Guidance at E2 states

“The public is entitled to expect a high degree of probity from a professional who has undertaken to abide by a code of ethics. The reputation of ACCA and the accountancy profession is built

upon the public being able to rely on a member to do the right thing in difficult circumstances. It is the cornerstone of the public value which an accountant brings.

The Committee should bear these factors in mind when considering whether any mitigation presented by the member is so remarkable or exceptional that it warrants anything other than exclusion from membership or removal from the student register.”

69. The Committee decided that a sanction of exclusion from ACCA's register was the only proportionate sanction for an accountant who had behaved dishonestly. It took into account that the public expected ACCA members and accountants to behave honestly with financial matters when working in a company as a financial director. It therefore found that this sanction was the only sanction that would protect the public, maintain public confidence in the profession, and in ACCA, and declare and uphold proper standards of conduct and performance.
70. The Committee, therefore, ordered that Miss Gungadin be excluded from ACCA's register in accordance with Regulation 13(1) of the CD Regulations.
71. The Committee noted that, under Regulation 13, it could have imposed a minimum period before Miss Gungadin could reapply for membership. However, it decided that, having taken into account the mitigating circumstances, it should be open to her to reapply for membership after 12 months, which is the mandatory minimum period.

COSTS AND REASONS

72. ACCA applied for costs in the sum of £6,803. The Committee was satisfied that the application for costs was just and reasonable.
73. The Committee considered Miss Gungadin's statement of means, and her submission that she could not afford to pay the costs, particularly if she lost her job. She stated that she was paying off a loan because of the money she had had to pay back to Firm A, that she still had her student loan, and she was in the process of moving into a new property, and so she had to pay a deposit and rent.
74. The Committee decided that it was fair and proportionate for Miss Gungadin to pay costs to ACCA. It noted that ACCA's Guidance on Costs Orders stated at paragraph 13 that the normal position is that the member should pay the reasonable and proportionate costs of ACCA bringing the case.
75. Having taken into account her limited financial circumstances, the Committee decided that it was fair and proportionate for Miss Gungadin to pay £2,400 towards ACCA's costs.

EFFECTIVE DATE OF ORDER

76. The Committee decided that the effective date of the order was at the conclusion of the appeal period. It was not persuaded that the effective date of order needed to be made immediate.

Mr Maurice Cohen
Chairman
13 November 2019