



## HEARING

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

#### REASONS FOR DECISION

**In the matter of:** Miss Naina Raj Rajkumar Chimnani

**Heard on:** Tuesday, 18 February 2020

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

**Committee:** HH Suzan Matthews QC (Chairman)  
Mr Barry Picken MBE (Lay)  
Mr David Horne (Accountant)

**Legal adviser:** Mr Alastair McFarlane

**Persons present and capacity:** Miss Georgina Luscombe (Case presenter on behalf of ACCA)  
Mr Jonathan Lionel (Hearings Officer)

**Observers:** None

**Summary:** Exclusion from the student register  
Ineligible to apply for re-admission for a period of 5 years

**Costs:** £5,800.00

## **PRELIMINARY APPLICATIONS**

1. ACCA was represented by Ms Luscombe. Miss Chimnani did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages 1 – 85, and a service bundle, numbered pages 1-16.

## **SERVICE/ PROCEEDING IN ABSENCE**

2. Having considered the service bundle, the Committee was satisfied that notice of the hearing was served on Miss Chimnani in accordance with the Complaints and Disciplinary Regulations 2014 (“CDR”).
3. The Committee next considered whether it was in the interests of justice to proceed in absence of Miss Chimnani. The Committee accepted the advice of the Legal Adviser. The Committee was mindful that Miss Chimnani had a right to attend the hearing and to participate, and that the discretion to proceed in her absence must be exercised with the utmost care and caution.
4. The Committee noted that ACCA’s Notice of Hearing, dated 16 January 2020, to Miss Chimnani’s address in Pakistan offered her the opportunity of attending via video or telephone link, with the costs being met by ACCA. Miss Chimnani had not availed herself of this opportunity, or made any communication with ACCA about attending the hearing. She had not engaged with ACCA about the case since November 2019, when she indicated she did not wish to complete the Case Management form, and requested that she be “disqualified” from ACCA’s “program”, and her ACCA global account closed. The Committee was satisfied that all reasonable attempts have been made to secure Miss Chimnani’s attendance/participation at the hearing. The Committee was satisfied that Miss Chimnani had voluntarily disengaged from the process, and was not persuaded that any adjournment would increase the chance of Miss Chimnani attending or participating further in the case. On the information before it, and bearing in mind its duty to ensure the expeditious conduct of its business and the wider public interest, the Committee was satisfied that it was in the interests of justice to proceed in the absence of Miss Chimnani. The Committee reminded itself that her absence added nothing to ACCA’s case, and was not indicative of guilt.

## Allegation 1

- (a) During an FFA – Financial Accounting examination on 04 April 2019, Miss Naina Raj Rajkumar Chimnani was in possession of:
  - (i) Unauthorised materials in the form of notes on her arm whilst at her exam desk, contrary to Examination Regulations 4 and/or 5.
- (b) Miss Naina Raj Rajkumar Chimnani intended to use any or all of the items set out at 1(a) above to gain an unfair advantage;
- (c) Miss Naina Raj Rajkumar Chimnani's conduct in respect of 1(b) above was;
  - (i) Dishonest, in that Miss Naina Raj Rajkumar Chimnani intended to use any or all of the unauthorised materials which she had at her exam desk to gain an unfair advantage; or in the alternative
  - (ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2019).
- (d) By reason of her conduct, Miss Naina Raj Rajkumar Chimnani is:
  - (i) Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the matters set out at 1(a) to 1(c) above; or
  - (ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of 1(a) above.

## **BACKGROUND**

5. On 06 January 2016, Miss Chimnani registered as an ACCA student.
6. Miss Chimnani attended the Tabannis School of Accountancy exam centre on 04 April 2019, in order to sit the FFA – Foundations in Financial Accounting examination. The exam commenced at 11.00am and was due to last for 3 hours 20 minutes.
7. All candidates for ACCA examinations are made aware of the Examination Regulations as follows:
  - Prior to an examination, all Computer Based Examination candidates registering for CBE in advance of each CBE session receive the ACCA student information sheet and Exam Regulations;

- Before an examination commences, the invigilator's announcements draw candidates' attention to the Regulations and Guidelines outlined in the student information sheet. In particular, point 3 of the announcement and Regulation 5 of the Exam Regulations, is a clear instruction to all candidates to remove all unauthorised materials from their desks.
8. The exam centre Supervisor, Mr A, states in his highlighted 'Malpractice' Supervisor statement, completed on the day of the exam that:

*"This is to inform you about a malpractice case of (Naina Raj Chimnani Acca Reg # 3613358, DOB: , CNIC NO: 43203- 0107281-0) who appeared in (FFA) on 4th April 2019 at Tabannis School of Accountancy. After the exam was started the invigilator observed her acting suspicious. Upon further investigation she was observed watching her hand when she was asked to show her hand she had something written on it. A picture for evidence has been taken and candidate report along with my report has been written which would be shared with CBE via email with evidence."*

9. On the day of the examination, Miss Chimnani completed a 'Candidate statement' in relation to the incident and asserted that, *"Before appearing in my exam I have written a T-Account point in my hand which was my mistake. I am sorry for that. Kindly take a relevant or appropriate decision. Invigilator has seen that something was written on my hand during the exam. I am extremely sorry."* The statement has been signed by Miss Chimnani and dated 04 April 2019 accordingly.
10. The Exam Centre provided a completed SCRS1A form from the Invigilator, Miss C. In her SCRS1A form, Miss C stated that:

*"as the exam started, I noticed the candidate glancing over her hand multiple times. Upon further investigation I saw something was written on her hand. I asked her to show her hand and find a table written. I informed the exam supervisor at once."* Miss C confirmed that the "Exam day Supervisor [Mr A]" was a witness to the incident and that the "Supervisor spoke to the candidate informing her about the disciplinary procedure. The student was extremely sorry for what she did."

11. Ms B, the Qualifications Technical Advisor, confirmed that the material is relevant to the syllabus and is relevant to the examination, asserting:

*"I can confirm as the FA Qualifications Technical Advisor (QTA) that the information written on the students arm is a pro-forma Sales Ledger Control Account (Receivables) and a Purchase Ledger Control Account (Payables). It*

*clearly shows the typical accounting entries that would be made in these accounts. It is used by Content Providers and those teaching the subject as an aide memoire. This information is entirely relevant and an examinable component of the FA exam. The annotations would assist a student with a question on syllabus learning outcome E3 Control Accounts and Reconciliations most directly but also syllabus learning outcome D1 Sales and purchases and D8 Receivables and payables.” Ms B subsequently confirmed that “FA and FFA are exactly the same exam but are called either FA or FFA depending on the route the student is taking. So my comments still stand and are equally applicable to a FFA and therefore this student. I am usually referred to as the FA/FFA QTA to cover both situations.”*

### **ACCA’s SUBMISSIONS**

12. The unauthorised material consisted of the material written on Miss Chimnana’s arm. Ms B established it was relevant to the syllabus. ACCA submitted that Miss Chimnani has breached Examination Regulation 4 and 5 by taking material which was relevant to the syllabus into an examination. It further contended that her purpose for so doing was to intend to use the unauthorised material in order to gain an unfair advantage.
13. ACCA relied on the provision set out in Exam Regulation 7(a). Once a student is found in possession of 'unauthorised material', it is assumed that the student intended to use them to gain an unfair advantage. ACCA maintain that Miss Chimnani was found in possession of such materials and therefore Exam Regulation 7(a) applied. The burden of proof therefore shifted to Miss Chimnani and they submitted that, in all the circumstances, she has failed to discharge the requisite burden of proof.
14. ACCA submitted that by trying to gain an unfair advantage by cheating in an exam, Miss Chimnani’s conduct would be regarded as dishonest according to the standards of ordinary decent people and amounted to misconduct under bye-law 8(a)(i).

### **MISS CHIMNANI’S SUBMISSIONS**

15. On the form completed and signed by her on the day of the exam, Miss Chimnani accepted that she had written material on her arm, and stated it was a mistake and she was “extremely sorry”. In an e-mail dated 19 September 2019 to ACCA, Miss Chimnani stated:

*“Firstly, I have not seen and used any of material for multiple times that was written*

*on hand as per statement. There was no Question in paper based on the written material on my hand. Secondly, I did not complete my paper and Questions which I attempted did not require the material references which was written on hand. Thirdly, the mentioned exams supervisor forced me to write down his desired statement. And he told me write down that I was cheating and using the written material. Prior to my final written statement, I denied twice but he warned that I had not written his desired statement then we would have written down whatever we felt was appropriate. Kindly, resolve this matter as soon as please.”*

16. Further, in her email dated 26 September 2019, Miss Chimnani stated:

*“I want to again emphasise that written statements was recorded forcely. The supervisor warned me that he would not give me my CNIC and mobile until and unless I wrote down the desired statement. The Supervisor did even not allow me to call my family members and relatives. I want that Independent Assessor will take the above statement in his/her attention”.*

#### **DECISION ON ALLEGATIONS AND REASONS**

17. The Committee accepted the advice of the Legal Adviser. The Committee reminded itself that the burden of proving that Miss Chimnani possessed unauthorised materials, relevant to the syllabus being examined, rested upon ACCA. However, pursuant to Examination Regulation 7, if this was established, the burden of proving that she did not intend to use them to gain an unfair advantage was on her. The standard of proof to be applied throughout was the ordinary civil standard of proof, namely the ‘balance of probabilities’.
18. The Committee heard that there had been no previous findings against Miss Chimnani and accepted that it was relevant to put her good character into the balance in her favour.

#### **DECISION ON FACTS**

19. The Committee carefully considered all the documentary evidence it had received, as well as the submissions of Miss Luscombe on behalf of ACCA and those written by Miss Chimnani. It reminded itself to exercise caution, as it was working from documents alone.

20. The Committee was satisfied that Miss Chimnani sat the FFA exam on 04 April 2019. It accepted Miss C's evidence that she warned all candidates to remove all unauthorised materials before the reading period started. On the basis of Mr A's and Miss C's evidence, which it accepted as credible, and supported by the photograph, it was satisfied that Miss Chimnani had notes on her arm that constituted the materials with her during the exam. It is further satisfied, on the basis of Ms B, that these materials were relevant to the exam that she was undertaking and that they were not materials that were authorised under the Exam Regulations. The Committee was satisfied that Miss Chimnani's assertion that the questions she attempted did not "require" the notes on her arm is not material to the issue of whether the notes were relevant to the syllabus. Further, the Committee rejected as implausible Miss Chimnani's assertion that she was "forced" to write her apology. It, therefore, determined that she possessed "unauthorised materials." Accordingly, Miss Chimnani breached Exam Regulations 4 and 5, and the Committee was, therefore, satisfied that Allegation 1 (a) was proved.
21. It next considered Allegation 1 (b) and whether Miss Chimnani intended to use the unauthorised materials to gain an unfair advantage.
22. Exam Regulation 7 provides that where unauthorised materials relevant to the syllabus being examined are found in the possession of an examinee, it is presumed that the examinee intended to use them to gain an unfair advantage. This presumption can be rebutted by the examinee. Therefore, there was a burden upon Miss Chimnani to establish, on the balance of probabilities, that she did not intend to use the unauthorised materials to gain an unfair advantage in the exam.
23. There was no explanation advanced by Miss Chimnani, other than the one recorded on the "Candidate Statement" on 04 April 2019, which the Committee found was made voluntarily and was true. This was evidence as to her reaction when caught and it was that she immediately apologised. The Committee was not persuaded that Miss Chimnani had rebutted the presumption of intention to use the unauthorised materials to gain an unfair advantage.
24. Further, on the evidence before it, the Committee was satisfied, on the balance of probabilities, that Miss Chimnani intended to use the unauthorised materials on her arm to gain an unfair advantage in the exam. The Committee considered it

unbelievable that she would have gone to the effort of writing these notes on her arm if she had not intended to use them. By virtue of this finding of fact, the Committee was satisfied that this was an intentional act by Miss Chimnani and that, therefore, the allegation that she intended to use these materials to gain an unfair advantage is proved. Accordingly, it was, therefore, satisfied that Allegation 1 (b) was proved.

25. The Committee next asked itself whether the proven conduct in Allegation 1 (b) was dishonest.
26. The Committee considered what Miss Chimnani's belief was as to the facts. It rejected her account as implausible. It accepted that the material was relevant to the exam she was sitting and that she knew that taking this material into the exam was prohibited. It was satisfied that she had intended to use the material to cheat in the exam and gain an advantage over other examinees. It had no hesitation in determining that Miss Chimnani's belief at the time was dishonest according to the standards of ordinary decent people. Accordingly, it was satisfied that Allegation 1(c)(i) was proved and did not consider the alternative of Allegation 1(c)(ii).
27. The Committee next asked itself whether, having breached Examination Regulation 6 and having been dishonest and acted in breach of the Fundamental Principle of Integrity, Miss Chimnani was guilty of misconduct.
28. 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 Miss Chimnani's actions brought discredit on her, the Association and the accountancy profession. It was satisfied that intending to cheat in a professional exam was deplorable conduct and reached the threshold for misconduct.
29. In the light of its judgment on Allegation 1(d)(i), no finding was needed upon Allegation 1(d)(ii).

## **SANCTIONS AND REASONS**

30. The Committee noted its powers on sanction were those set out in Regulation 12(3). 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.



31. The Committee considered that the attempt at cheating in this case was very serious. 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 undermines its reputation and public confidence in it.
32. The Committee also noted that Miss Chimnani apologised at the time to the Invigilator. However, beyond this, it has seen no evidence of any insight or understanding into the seriousness of her behaviour. There were no mitigating factors before the Committee, other than her previous good character, and it considered the planned nature of the cheating and lack of any evidence of insight or understanding to be aggravating factors.
33. Given the Committee's view of the seriousness of her conduct, it was satisfied that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to highlight to the profession, and the public, the gravity of the proven misconduct.
34. The Committee determined that her behaviour was fundamentally incompatible with Miss Chimnani remaining on the student register of ACCA, and considered that the only appropriate and proportionate sanction was that she be removed from the student register with a direction that no application for readmission be considered until the expiry of 5 years after the effective date of the order.

#### **COSTS AND REASONS**

35. ACCA claimed costs of £6,346.50 and provided a detailed schedule of costs. It noted Miss Chimnani was a student, but she had not provided a statement of means. The Committee decided that it was appropriate to award costs in this case but noted that the hearing time had taken less than estimated and, therefore, made a reduction to reflect this. It concluded that the sum of £5,800 was appropriate and proportionate. Accordingly, it ordered that Miss Chimnani pay ACCA's costs in the amount of £5,800.00.

#### **EFFECTIVE DATE OF ORDER**

36. This order shall take effect from the date of the expiry of the appeal period, unless notice of appeal is given prior to the expiry of that period, in which case it shall become effective

(if at all) as described in the Appeal Regulations. The Committee was not persuaded that the ground for imposing an immediate order was made out, given the facts of this case and that public protection is not involved.

**HH Suzan Matthews QC**  
**Chair**  
**18 February 2020**