

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Miss Pooja Thakur
Heard on:	Wednesday, 26 January 2022
Location:	Held Remotely by Microsoft Teams via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
Committee:	Mr Andrew Gell (Chair) Ms Fiona MacNamara (Accountant) Ms Samantha Lipkowska (Lay)
Legal Adviser:	Miss Juliet Gibbon
Persons present and capacity:	Ms Michelle Terry (ACCA Case Presenter) Ms Nkechi Onwuachi (Hearings Officer) Ms Alison Catchpole (Acca Paralegal)
Summary	Allegations 1(a), 1(b), 1(c), 2(a), 3(a), 3(b) 3(c), and 4(a) found proved, removed from the student register.
Costs:	Student to pay costs to the ACCA in the sum of £7,000.00.

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PRELIMINARY

1. The Disciplinary Committee (*"the Committee"*) convened to hear allegations of misconduct against Miss Pooja Thakur. The hearing was conducted remotely through Microsoft Teams. The Committee had a bundle of papers numbered pages 1 to 113, a tabled additional bundle, numbered pages 1 to 2, a service bundle, numbered pages 1 to 12, video footage of the examination and a costs bundle, numbered pages 1 to 5.
2. Ms Terry represented ACCA. Miss Thakur did not attend the hearing and was not represented.

SERVICE

3. Written notice of the hearing was sent by electronic mail (*"email"*) to Miss Thakur's registered email address on 21 December 2021. The password to open the notice of hearing was sent by a separate email. The Committee had sight of two notifications stating that both emails had been delivered to the email address. By virtue of Regulation 22(8)(b) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014, as amended (*"the Regulations"*) the notice would have been deemed served on the same day. ACCA has, therefore, given the requisite 28 days' notice to Miss Thakur as required under Regulation 10(1)(a) of the Regulations.
4. The Committee was satisfied that the email attaching the notice of hearing had been sent to Miss Thakur's registered email address and had been delivered successfully. The notice of hearing, to which Miss Thakur had access, contained all the requisite information about the hearing in accordance with Regulation 10 of the Regulations.
5. The Committee accepted the advice of the Legal Adviser. It was satisfied that service had been effected in accordance with Regulations 10 and 22 of the Regulations.

APPLICATION TO PROCEED IN ABSENCE

6. Ms Terry made an application to proceed in the absence of Miss Thakur.
7. The Committee, having satisfied itself that the requirements of Regulations 10 and 22 of the Regulations had been complied with, therefore went on to consider whether to proceed in the absence of Miss Thakur. The Committee bore in mind that the discretion to do so must be exercised with the utmost care and caution.
8. The Committee noted that the email address to which the hearing notice had been sent was the same one that Miss Thakur had used to contact ACCA following the examination on 29 November 2020. It also noted that Miss Thakur had not replied to ACCA's email attaching the notice of hearing or any previous communication from the Investigations Officer.
9. The Committee was mindful that there is a public interest in dealing with regulatory matters expeditiously. It noted that Miss Thakur had not engaged with ACCA's investigation. Given her non-engagement the Committee was of the view that there was no evidence before it to suggest that an adjournment of today's hearing would result in Miss Thakur's attendance on a future date.
10. Having balanced the public interest with Miss Thakur's own interests, the Committee determined that it was fair, reasonable and in the public interest to proceed in her absence.
11. Ms Terry made an application to amend Allegation 2 to refer to '*Allegation 1*' not '*Allegation 2*' in the first line, as currently drafted. She said that this was a typographical error, and that Miss Thakur would not be prejudiced in her defence by the proposed amendment.
12. The Committee accepted the advice of the Legal Adviser. It determined that Miss Thakur would not be prejudiced by the proposed amendment and allowed ACCA's application to amend the typographical error.

AMENDED ALLEGATIONS

Miss Pooja Thakur, a student member of the Association of Chartered Certified Accountants (ACCA):

1. On 29 November 2020, during a FA Financial Accounting examination (the '*Exam*'):
 - a. Caused or allowed a person to be in the testing space where she was taking the Exam, contrary to Examination Regulation 2 and the Examinations Guidelines, and/or Examination Regulation 10.
 - b. Failed to respond adequately to a proctor's instruction to keep her eyes on the screen and/or materials, contrary to Examination Regulation 2 and/or Examination Regulation 10.
 - c. Failed to unplug a second monitor, contrary to Examination Regulation 2 and the Examinations Guidelines, and/or Examination Regulation 10.
2. The conduct described at Allegation 1 is:
 - a. Dishonest in that Miss Thakur sought to obtain an unfair advantage in her exam attempt; or, in the alternative,
 - b. Contrary to the Fundamental Principle of Integrity as applicable in 2020 in that such conduct demonstrates a failure to be straightforward and honest.
3. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2020, failed to co-operate with the investigation of a complaint, in that she did not respond to any or all of ACCA's correspondence dated:
 - a. 04 May 2021;

- b. 26 May 2021;
 - c. 10 June 2021.
4. By reason of her conduct, Miss Thakur is:
- a. Guilty of misconduct pursuant to byelaw 8(a)(i), in respect of any or all of the matters set out at Allegations 1 to 3 above; or in the alternative,
 - b. Liable to disciplinary action pursuant to byelaw 8(a)(iii), in respect of any or all of the matters set out at Allegations 1 and/or 3.

BACKGROUND

13. Miss Thakur registered as a student with ACCA on 20 August 2019. As such, she is bound by ACCA's Byelaws and Regulations.
14. On 29 November 2020, Miss Thakur commenced an on-demand Financial Accounting examination (the Exam) remotely. The Exam was due to last for two hours but was terminated early by the proctor (remote invigilator) due to suspicious behaviour on the part of Miss Thakur.
15. The proctor (remote invigilator) filed an Incident Report setting out concerns and ACCA commenced an investigation. This included obtaining documents and video footage of the Exam.
16. The video footage revealed the following:
- a. The presence of a third party in the room where Miss Thakur was taking the Exam (the testing space);
 - b. Miss Thakur was repeatedly reading the Exam questions out loud, despite the proctor requesting her not to do so;

- c. Anomalies in respect of a monitor that appeared to have been used in some capacity during the Exam;
 - d. Miss Thakur was repeatedly looking away from the screen during the exam notwithstanding the proctor requesting her not to do so.
17. Miss Thakur immediately wrote to ACCA by email following the Exam stating *'... today I was giving my exam of financial accounting and my invigilator discontinued and ended the exam session without a valid reason ... At first, I was just reading the exam question loudly to understand them but when the warning was given I stopped reading and was just solving the question on the right side of the desk and the invigilator thought that there was something wrong and I was asking me to show the right side of the desk where there was a wall. I would request ACCA body to reschedule my exam since there wasn't anything that would hamper the integrity of the exam and the ACCA body'* (sic). Ms Thakur also attached a screenshot of the chats between herself and the proctor.
18. ACCA responded the same day informing Miss Thakur that her email had been received and would be responded to as soon as possible. A further email was sent to Miss Thakur on 03 December 2020 stating that her request was going to be passed to a specialist team.
19. The Investigations Officer wrote to Miss Thakur by email on 04 May 2021, 26 May 2021 and 10 June 2021 but Miss Thakur failed to respond to these communications. To each communication the Investigations Officer appended the proctor's incident report summary and a chronology of observations from the video footage.
20. ACCA sent a copy of the disciplinary report to Miss Thakur on 20 July 2021 informing her that the report was to be referred to the Independent Assessor for review on 06 August 2021 and that any comments or concerns that she wished to bring to the assessor's attention should be submitted in writing prior to that date. Miss Thakur did not respond to ACCA. The video footage of the Exam was sent to Miss Thakur on 26 May 2021.

21. On 24 September 2021 ACCA wrote to Miss Thakur attaching a copy of the assessor's decision and on 04 November 2021 the Case Progression Officer wrote to her requesting that she return the Case Management Form to ACCA. Again, there was no response from Miss Thakur to these emails.

ORAL EVIDENCE

22. The Investigating Officer, Ms 1, was called to give evidence to the Committee. Ms 1 took the Committee through the video footage, highlighting the relevant times in the video footage when:
 - a. The hair of a third party could be seen on Miss Thakur's screen on three separate occasions;
 - b. The first room pan when the stand-by light could be seen on a secondary monitor;
 - c. The second room pan when a small, illuminated area can be seen on the secondary monitor and Miss Thakur is asked by the proctor to turn off the monitor which she does by switching it off at the plug;
 - d. The third room pan when the stand-by light was again showing on the second monitor;
 - e. Various occasions when Miss Thakur appears to be looking to her left (in the direction of where the third party's hair was previously seen on the screen);
 - f. Miss Thakur appearing to whisper to a third-party present in the room;
 - g. A third-party present in the room whispering;
 - h. A transference of light that could have been a shadow.

SUBMISSIONS

23. Ms Terry submitted that the following Examination Regulations and the guidance provided in the ACCA Information Sheet for On-demand CBE Students Sitting Exams at Home were relevant in this case:
- a. Regulation 2 provides that *'you are required to comply in all respects with any instructions issued by the exam supervisor/s, invigilator/s, proctor/s, and any ACCA personnel before, during and at the conclusion of an exam'*; and
 - b. Regulation 10 provides that *'you may not engage in any improper conduct designed to assist you in your exam attempt ...'*;
 - c. The guidance: *'Before the examination start, you must ensure you follow the instructions below:*
 - i. *Ensure you are not disturbed by anyone.*
 - ii. *Disconnect extra monitors, projectors and televisions.*
 - iii. *Move electronic devices, headphones and watches out of arm's reach.*
 - d. The guidance: *'Prior to Exam Starting'*
 - i. *Be located in a private, well-lit room with no one else around you.*
 - j. *....Close all third-party programs and unplug any secondary monitors.*
24. Ms Terry submitted that ACCA relied on the three occasions in which hair could be seen in the video footage, together with Miss Thakur's behaviour in looking around the room and reading the Exam questions out loud, to prove that there was a third-party present in the room with her during the Exam attempt. There was also the evidence that the monitor had been switched back on by someone other than Miss Thakur.

25. Ms Terry submitted that there were initial concerns that the proctor attempted to address with Miss Thakur by asking her to keep her eyes on her screen and materials. Miss Thakur had acknowledged this in the chat line by responding 'OK' but had continued to look away from the screen, as if towards a third party in the room.
26. In respect of the secondary monitor, Ms Terry submitted that the monitor initially was on stand-by, as shown by the light and had then been turned off by Miss Thakur, at the request of the proctor, during the second room pan. Ms Terry submitted that Ms Thakur had clearly attempted not to show the monitor during the third room pan but it could be seen at the end and the stand-by light could be seen to be illuminated once again. She submitted that this must have been turned on by the third party in the room in order for that person to use the monitor to assist Miss Thakur in gaining an unfair advantage in the Exam.
27. Ms Terry submitted that Miss Thakur's conduct in attempting to gain an unfair advantage in the Exam was plainly dishonest.
28. Ms Terry submitted that Miss Thakur's actions in attempting to gain an unfair advantage in the Exam undermined the examination process and ACCA's reputation as a provider of examinations and that Miss Thakur's dishonest conduct fell far short of the conduct expected of professional accountants and those training to become accountants and that misconduct, as defined by by-law 8(c), was clearly made out.

DECISION AND REASONS

29. The Committee carefully considered the documentary evidence before it and the oral submissions made by Ms Terry. The Committee accepted the advice of the Legal Adviser.
30. The Committee bore in mind that the burden of proving the allegations rests on ACCA and the standard of proof is the balance of probabilities.

31. The Committee noted the evidence that Miss Thakur had agreed to abide by the Examination Regulations as part of the pre-exam set up, as seen in the chat log.

Allegation 1(a) - Proved

32. The video footage of the Exam, which the Committee has seen, clearly shows Miss Thakur reading the Exam questions out loud and looking off screen multiple times, which continued despite Miss Thakur being asked to stop by the proctor. It also shows the presence of another person in the room as that person's hair appears on the screen on three separate occasions. Further, at various times whispers can be heard off-screen to which Miss Thakur appears to respond. The Committee was satisfied that there was another person in the room with Ms Thakur who must have been there to assist her in answering the Exam questions. The Committee was satisfied that Miss Thakur had breached Examination Regulations 2 and 10 and it found Allegation 1(a) proved.

Allegation 1(b) - Proved

33. The chat log shows that Miss Thakur received a written instruction from the proctor at 10.05pm: *'Please try to keep your eyes on your screen and materials'*. Miss Thakur read the instruction out loud and had responded, *'for sure'*, indicating that she had seen the warning, and typed *'OK'* into the chat log. The Committee had also witnessed this exchange in the video footage. Following this instruction, Miss Thakur can be seen on the footage continuing to look away from the screen for extended periods. Miss Thakur had, therefore, failed to comply with the proctor's request to keep her eyes on the screen, as directed. The Committee was satisfied that Miss Thakur had breached Examination Regulations 2 and 10 and it found Allegation 1(b) proved.

Allegation 1(c) - Proved

34. Shortly after the launch of the Exam the proctor requested a room pan that is shown on the video footage. A second monitor can be seen on the desk near to Miss Thakur's workstation. The screen is illuminated, with a small white

rectangle clearly visible on the monitor. Miss Thakur is heard to say *'It's just not connected to anything. I will switch it off'*. She then switches off a plug on the wall and the stand-by light and screen are shown as no longer illuminated. Later on in the Exam, the proctor requests a further room pan to include the desk. Miss Thakur wrote on the chat line *'OK sure, I'll show you around'* and the room pan commenced some 15 seconds later. During this, Miss Thakur did not show the monitor screen but it can be seen later in the video footage to be once again illuminated. The Committee was satisfied, on the evidence before it, that Miss Thakur had failed to unplug the secondary monitor, or that someone else in the room had re-plugged it in, in order to use it to assist Miss Thakur in answering the Exam questions. The Committee was satisfied that Miss Thakur had breached Examination Regulations 2 and 10 and it found Allegation 1(c) proved.

Allegation 2(a) – Proved

35. The Committee was satisfied that Miss Thakur had deliberately sought to gain an unfair advantage in the Exam by having a third party and a secondary monitor present in the exam setting that was plugged in. Miss Thakur's attempt to obtain an unfair advantage or *'Cheat'* in the Exam would, by the standards of ordinary decent people, be considered dishonest. The Committee was satisfied that Miss Thakur's conduct was dishonest, in accordance with the test for dishonesty set out in *Ivey v Genting Casinos (UK) t/a Crockfords [2017] UKSC 67*.

Allegation 2(b) - Not Considered

36. On the basis that this allegation was pleaded in the alternative to Allegation 2(a), the Committee made no finding in respect of it.

Allegations 3(a), 3(b) and 3(c) - Proved

37. Miss Thakur failed to respond to three emails sent to her by ACCA in relation to the investigation on 04 May 2021, 26 May 2021 and 10 June 2021. Under Regulation 3(1) of the Regulations Miss Thakur is under a duty to cooperate

fully with the investigation. There is a duty on ACCA members to engage with their regulator. The Committee was of the view that Miss Thakur's failure to cooperate with the investigation had the potential to undermine public confidence in the profession and ACCA as a regulator.

Allegation 4(a) - Misconduct Proved

38. The Committee determined that Miss Thakur's premeditated and dishonest conduct, in attempting to 'cheat' in an ACCA professional examination, in order to gain an unfair advantage in that examination, fell far below the standards expected of an ACCA student. In the Committee's determination Miss Thakur's dishonest conduct undermined the integrity of ACCA's examination process and brought discredit to her, the Association and the accountancy profession. The Committee was satisfied that Miss Thakur's dishonest conduct and her failure to cooperate with the disciplinary investigation amounted to misconduct.

Allegation 4(b) - Not Considered

39. The Committee, having found Allegation 4(a) proved, did not go on to consider the alternative charge set out in Allegation 4(b).

SANCTION AND REASONS

40. Ms Terry informed the Committee that there were no previous disciplinary findings against Miss Thakur, although the Committee noted that she had only been a registered student of ACCA for a short period of time at the date of the examination.
41. The Committee accepted the advice of the Legal Adviser, who referred it to Regulation 13(4) of the CDR and to ACCA's Guidance for Disciplinary Sanctions. In considering what sanction, if any, to impose the Committee bore in mind the principle of proportionality and the need to balance the public interest against Miss Thakur's own interests. The purpose of any sanction was not meant to be punitive but was to protect members of the public, maintain

public confidence in the profession and ACCA and to declare and uphold proper standards of conduct and behaviour.

42. When considering the appropriate sanction, the Committee considered the aggravating and mitigating features of the case. The Committee considered the following to be mitigating features:
 - a. Miss Thakur had no previous disciplinary findings against her although the Committee noted that she had only been a registered student since 20 August 2019.

43. The Committee considered the following to be aggravating features:
 - a. This was deliberate and premeditated dishonest conduct on the part of Miss Thakur in order to gain an unfair advantage in an ACCA professional examination.
 - b. Miss Thakur's misconduct undermined the integrity of the ACCA examination process and had the potential to damage the reputation of the ACCA qualification.
 - c. Miss Thakur had not engaged with the ACCA investigation or the proceedings and so there was no evidence of any insight or remorse on her part.

44. The Committee considered each available sanction in ascending order of seriousness, having concluded that taking no further action was not appropriate due to the seriousness of the dishonest conduct. The Committee also considered that issuing an admonishment or a reprimand would not be sufficient or proportionate, given the gravity of the conduct proved, and would not protect the public interest.

45. The Committee carefully considered whether a severe reprimand would be sufficient and proportionate, or whether removal from the Student Register was required. It had careful regard to the factors applicable to each of these

sanctions as set out in the Sanctions Guidance. The Committee considered that most of the factors applicable to a severe reprimand were not applicable in this case. The Committee concluded that a severe reprimand would not be appropriate or sufficient to protect the public interest.

46. The Committee had regard to paragraph E 2.2 of the Guidance for Disciplinary Sanctions which 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 a cornerstone of the public value which an accountant brings”*.
47. The Committee was mindful that the sanction of removal from the student register was the most serious sanction that could be imposed. The Committee took into account the guidance that this sanction was likely to be appropriate when the behaviour of the student was fundamentally incompatible with being a registered student of ACCA. The Committee was satisfied that Miss Thakur's dishonest conduct in attempting to cheat in a professional examination, together with her failure to cooperate in ACCA's investigation, had reached that high threshold. The Committee had heard no mitigation from Miss Thakur to warrant anything other than removal from the student register.
48. For the above reasons, the Committee concluded that the appropriate and proportionate sanction was removal from the student register.
49. The Committee did not deem it necessary to impose a minimum period before which Miss Thakur is able to reapply for admission as a student member.

DECISION ON COSTS AND REASONS

50. The Committee was provided with two costs schedules. ACCA applied for costs in the sum of £7,687.00.
51. The Committee was satisfied that the costs sought by ACCA were appropriate and reasonably incurred. The Committee noted that Miss Thakur had not

provided any details of her current financial means or provided the Committee with any written representations in relation to the costs claimed by ACCA. The Committee was not, therefore, in a position to make any reductions based on Miss Thakur's financial circumstances. The Committee did, however, consider that there should be a reduction in the costs as the hearing had taken less time than anticipated. The Committee determined that it would be fair and proportionate to order Miss Thakur to pay a contribution to ACCA's costs in the sum of £7,000.00.

ORDER

- i. Miss Pooja Thakur shall be removed from ACCA's student register.
- ii. Miss Pooja Thakur shall pay a contribution to ACCA's costs in the sum of £7,000.00.

EFFECTIVE DATE OF ORDER

52. The Committee determined that the order shall take effect from the date of the expiry of the appeal period referred to in the Appeal Regulations.

Mr Andrew Gell
Chair
26 January 2022