

HEARING
DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED
CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Miss Momina
Heard on:	Monday, 14 November 2022, and Thursday, 20 April 2023
Location:	Remotely via Microsoft Teams
Committee:	Mrs Kate Douglas (Chair) Mr Trevor Faulkner (Accountant) Mr Damian Kearney (Lay)
Legal Adviser:	Mr Alastair McFarlane on 14 November 2022 Mr Robin Havard on 20 April 2023
Persons present and capacity:	Ms Michelle Terry (ACCA Case Presenter) Mr Jonathan Lionel on 14 November 2022 Ms Nikita Apostol on 20 April 2023 (Hearings Officers) Miss Momina (ACCA Student) Mr Fahid Verya (Counsel for Miss Momina)
Summary	Admonishment
Costs:	No order

ALLEGATIONS

Miss Momina, a student of the Association of Chartered Certified Accountants ('ACCA'):

1. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014 (as

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amended), 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. 01 June 2021;
 - c. 16 June 2021.
2. On 05 August 2020, during an MA2 Managing Costs and Finance examination (the 'Exam'):
- a. Contrary to Examination Regulation 2, failed to comply with instructions provided to her by ACCA in the document entitled "Information Sheet for On-Demand CBE Students sitting exams at home" that she should:
 - i. Have "no one else around" her during the Exam;
 - ii. "Alert the proctor when finished BEFORE submitting" the Exam.
 - b. Communicated with a person other than an exam supervisor, invigilator or proctor during the course of the Exam, contrary to Exam Regulation 16.
3. By reason of her conduct, Miss Momina 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 and 2 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 2.

DECISION ON FACTS, ALLEGATIONS AND REASONS

1. In advance of the hearing on 14 November 2022, the Committee had considered the following: a hearing bundle (pages 1 to 93); a supplementary bundle (pages 1 to 105), a video recording of the exam session on 05 August 2020, and a service bundle (pages 1 to 12).
2. On 14 November 2022, the Committee had listened to Miss Momina give evidence.
3. It had also taken account of the submissions made by Ms Terry on behalf of ACCA and Mr Verea on behalf of Miss Momina. Finally, it had considered legal advice on 14 November 2022 which it had accepted.

4. In advance of the hearing on 20 April 2023, and in addition to the above, the Committee had been provided with an official transcript of part of the hearing on 14 November 2022 (pages 1 to 11), unofficial transcripts 1 and 2 of the hearing on 14 November 2022 (pages 1 to 20 and 1 to 45 respectively), and a service bundle (pages 1 to 27).
5. At the hearing on 20 April 2023, the Committee listened to the submissions made by Ms Terry on behalf of ACCA and Mr Verya on behalf of Miss Momina. It had also considered legal advice which it had accepted.

Allegation 1

6. Miss Momina admitted allegation 1. Based on that admission, the Committee found the allegation proved.
7. In order to better understand the context in which the admission had been made, the Committee made additional findings of fact.
8. On 31 July 2019, ACCA registered Miss Momina as a student. As such, she is, and was throughout the material time, bound by ACCA's Byelaws and Regulations, including the Examination Regulations.
9. Miss Momina had only been registered by her surname. Though her registered email address detailed [Private], her first name has not been registered on the CEC database.
10. On 05 August 2020, Miss Momina commenced an on-demand MA2 Managing Costs and Finance examination (the 'Exam') remotely. The Proctor (Remote Invigilator) in an Incident Report noted Miss Momina looking off screen during the exam as though another individual had walked by. The Proctor's report indicated that a shadow of the other person was seen moving on several occasions. They further noted that the other person was seen at the end of the exam taking a picture of Miss Momina's exam result. Additionally, they said that, after submitting the exam, Miss Momina ended the session without contacting the Proctor. The Proctor was unable to confirm the destruction of the scratch paper used for this exam.
11. An investigation was commenced.
12. On 28 January 2021, ACCA's CBE Delivery team emailed Miss Momina informing her that her conduct would be referred to the Professional Conduct Department, inviting her to make any comments on the allegation.

13. On 29 January 2021, prior to receiving the first letter from ACCA's Investigations Department, Miss Momina responded to ACCA's email of the previous day, using her registered email address. She explained that no one was in the room with her and during the exam she experienced connectivity issues due to the shutdown of electricity. In the same email, she requested ACCA to reactivate her account so that she could undertake a further exam. There was no indication that ACCA responded to that email.
14. On 12 February 2021, Miss Momina sent an email to ACCA's CBE Delivery team asking for a response to her previous email dated 29 January 2021.
15. On 16 April 2021, Miss Momina sent another email to ACCA's CBE Delivery team in which she maintained that she had not breached the Examination Regulations and had been waiting for a response regarding the investigation. She again requested her account be reactivated in order for her to attempt her upcoming exams.
16. On 28 April 2021, Miss Momina sent an email to ACCA's CBE Delivery team informing them that her account had been activated. However, she was experiencing issues on the website in making payment of her subscription.
17. On 28 April 2021, ACCA sent an auto-response to Miss Momina informing her that this was being looked into.
18. On 29 April 2021, ACCA's CBE Delivery team emailed Miss Momina informing her that her exam had been booked and she should make payment through the website.
19. On 04 May 2021, ACCA sent a letter to Miss Momina's registered email address informing her of the details of the complaint and seeking her response by 25 May 2021. Miss Momina failed to reply.
20. Within the letter of 04 May 2021, Miss Momina was asked a series of questions about her conduct during the exam. The letter contained the following paragraph:

"Duty to co-operate

In accordance with Complaints and Disciplinary Regulation 3(1), you are required to co-operate with this investigation. A failure or partial failure to co-operate fully with the investigation may render you liable to disciplinary action."

21. On 01 June 2021, ACCA sent another letter to Miss Momina's registered email address reminding her of her obligation to co-operate with the investigation and seeking her response by 15 June

2021. Miss Momina failed to reply.

22. On 16 June 2021, ACCA sent another letter to Miss Momina's registered email address reminding her of her obligation to co-operate with the investigation and seeking her response by 23 June 2021. Miss Momina failed to reply.
23. The Committee was satisfied that all three emails were sent to Miss Momina at the email address she registered with ACCA. The email address had not changed during the course of the investigation. None of the emails had been returned or bounced back into the Case Management System. The Committee considered it was significant that ACCA's Case Management System showed the date and time that the emails were opened using the password generated by the case management system. Miss Momina accepted that she had failed to reply to these emails but maintained that this was because of circumstances within the family, [Private].
24. ACCA sent an email on 07 October 2021 to the Connect Team to confirm whether Miss Momina's email address had changed at any point from the date she registered on 31 July 2019 with ACCA. A system named PROD was used which showed there was one change of email address that was actioned on 16 February 2020. There had been no change of email since 16 February 2020. The change of email address was prior to the investigation commencing and was the same email address Miss Momina had used when emailing ACCA in January 2021 and subsequently.
25. As a consequence, and again based on her admissions, the Committee was satisfied that, in failing to respond to the emails and letters of 04 May 2021, 01 June 2021 and 16 June 2021, Miss Momina had failed to co-operate with ACCA. Miss Momina was therefore in breach of Regulation 3(1) of the Complaints and Disciplinary Regulations. The Committee accepted Miss Momina's explanation for this failure, which was corroborated by documentary evidence.

Allegation 2(a)(i)

26. Prior to the exam, students, including Miss Momina, were provided with ACCA's Information Sheet for On Demand CBE exams which included the following instruction from ACCA that prior to starting the exam the student will "*...be located in a private, well-lit room with no one else around you.*".
27. ACCA submitted that, by failing to comply with this instruction from ACCA, Miss Momina was in breach of Examination Regulation 2, which required exam candidates "*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*".

28. ACCA maintained that Miss Momina caused or permitted a third party to be present in the room in which she was taking the exam.

29. The proctor's incident report stated:

“Throughout this exam, the test taker was observed looking off-screen as though looking at another person that was walking by. This person's shadow was also seen moving about several times during the exam. Examples of the test taker looking off- screen may be viewed at 00:44:03 and 00:49:10 in the recording. Examples of the test taker looking off-screen as though looking at another person may be viewed at 00:48:35, 01:30:40, and 01:38:40 in the recording. It was unclear whether or not the test taker was sharing information with this person that was continuously entering the room but that person did show up at the end of the recording to see the test taker's results and take a picture of them. After the test taker submitted their exam, they ended the session without contacting the proctor. Because of this, we were unable to confirm the destruction of the scratch paper used for this exam”.

30. The Committee had watched the video footage of the exam and was satisfied that there was evidence of a third party being present in the room at various stages during the course of the exam.

31. It had been agreed between ACCA and Miss Momina, and the Committee therefore found, that the third party who can be seen was Miss Momina's brother.

32. On this basis, the Committee found allegation 2(a)(i) proved.

Allegation 2(a)(ii)

33. Again, prior to sitting the Exam, Miss Momina was provided with the Information Sheet for On-Demand CBE Students sitting exams at home. This included the following instruction:

“POST EXAM

1. Alert the proctor when finished BEFORE submitting: Prior to submitting your exam, let your proctor know through the chat box that you are finished. They will oversee the submission process. You may also be required to tear up any scratch paper that was used during the exam.”

34. Miss Momina had not alerted the Proctor to the fact that she had finished the exam and did not destroy the scratch paper on screen.

35. However, ACCA had not presented any evidence regarding when and how the exam would have

finished. In the absence of any evidence to the contrary, the Committee accepted Miss Momina's explanation, including that she had not completed all of the exam questions, and found that the exam finished automatically after the allotted time, so that she had no opportunity to alert the proctor that the exam had ended nor, therefore, was there an opportunity for the Proctor to oversee the submission process.

36. Therefore, the Committee found this allegation not proved.

Allegation 2(b)

37. The Committee relied on its findings of fact in respect of allegation 2(a)(i) above. Furthermore, based on the video footage, the Committee was satisfied that, at various stages throughout the exam, Ms Momina was conversing with her brother who was in the room with her. However, the Committee also accepted the evidence of Ms Momina and found that the exchanges between her and her brother related to difficulties she was experiencing with the internet connection, as opposed to discussing the exam itself.
38. It was on this basis that the Committee found allegation 2(b) proved.

Allegation 3(a)

39. On the basis of its findings in respect of allegations 1, 2(a)(i) and 2(b), the Committee was not satisfied that Ms Momina's conduct was of such seriousness that it brought discredit to herself, or ACCA or the accountancy profession. The Committee accepted that the circumstances that Miss Momina found herself in while her [Private] led to misfortune causing her failure to fully co-operate with the investigation rather than her deliberately avoiding her responsibility to her Regulator. The Committee noted that she has engaged with her Regulator both before the cited communications and since and has fully participated with the hearing process. As the Committee accepted the explanation that Miss Momina's brother was in the room only to assist with her troublesome internet connection, it considered that this circumstance diminished the seriousness of the proven facts in allegation 2. Consequently, the Committee had not found Miss Momina guilty of misconduct and this allegation was not proved.

Allegation 3(b)

40. The findings of the Committee in respect of allegations 1 represented a breach of Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 as amended. The findings in respect of allegations 2(a)(i) and 2(b) represented breaches of Regulations 2 and 16 of the Examination Regulations respectively. On this basis, the Committee found allegation 3(b) proved.

SANCTION AND REASONS

41. The Committee considered what sanction, if any, to impose, taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions, and the principle of proportionality. It had listened to the submissions of Ms Terry on behalf of ACCA, and Mr Verya on behalf of Miss Momina. It had also heard legal advice from the Legal Adviser which it accepted.
42. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no order.
43. The Committee was mindful of the fact that its role was not to be punitive and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in ACCA, and to declare and uphold proper standards of conduct and performance.
44. In terms of seriousness, the Committee concluded that, as suggested in the Guidance, a failure to co-operate with ACCA was a very serious matter. As for the breaches of the Examination Regulations, whilst any breach was unacceptable, on the facts of this particular case, the Committee did not consider that such breaches were overly serious. There was no suggestion that Miss Momina was attempting to gain an unfair advantage in the course of the exam and the only reason her brother was in the room was to assist in resolving problems experienced by Miss Momina with the internet connection.
45. The Committee considered whether any mitigating or aggravating factors featured in this case.
46. The Committee accepted that there were no previous findings against Miss Momina. It also accepted that Miss Momina had shown a level of insight and remorse.
47. It was satisfied that, at the time of her failure to respond to correspondence from ACCA, Miss Momina was providing support for her family, [Private], and she was consequently distracted.
48. The Committee also took account of the fact that, both before and after the dates of the correspondence to which she failed to respond, Miss Momina had been in communication with ACCA. Indeed, prior to May and June 2021, Miss Momina had responded promptly to emails from ACCA. She had then participated fully in the proceedings to include organising representation by Mr Verya and giving evidence at the hearing on 14 November 2022.
49. Whilst the Committee had listened carefully to the submissions of Ms Terry, it did not consider that there were any aggravating features in this case.

50. The Committee was satisfied that there had been no adverse impact as a result of Miss Momina's conduct and that she had made admissions in the course of the hearing, showing a level of insight and remorse. The Committee had concluded that her conduct, particularly with regard to her failure to co-operate with ACCA, did not reflect a deliberate disregard of her professional obligations. Furthermore, the Committee had already accepted as mitigation the circumstances that existed within her family at the material time.
51. The Committee accepted that, both prior to, and since, the exam in August 2020, Miss Momina had sat and passed a number of additional exams without ACCA expressing any concerns regarding her conduct during those exams.
52. On the basis of its findings, the Committee concluded that an admonishment would represent a sufficient and proportionate outcome and would adequately reflect the seriousness of the Committee's findings.

COSTS AND REASONS

53. The Committee had been provided with a simple costs schedule (page 1) and a detailed costs schedule (pages 1 and 2) relating to ACCA's claim for costs. The Committee was also referred by Mr Verya to a statement of means provided by Miss Momina, together with documents relating to [Private] financial circumstances.
54. The Committee concluded that ACCA would ordinarily be entitled to an award of costs against Miss Momina, some, but not all, allegations having been found proved. The amount of costs for which ACCA applied was £13,568.00.
55. However, the financial information provided by Miss Momina was not challenged. This included the fact that [Private].
56. In all the circumstances, and exercising its discretion based on the information before it in respect of Miss Momina's financial status, the Committee considered that it was reasonable and proportionate to make no order in respect of costs.

EFFECTIVE DATE OF ORDER

57. This order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

Mrs Kate Douglas
Chair
20 April 2023