

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Ms Chahat Gupta
Heard on:	Tuesday, 25 and Wednesday, 26 April 2023
Location:	Virtual hearing using Microsoft Teams
Committee:	Mr Michael Cann (Chair) Ms Fiona MacNamara (Accountant) Ms Samantha Lipkowska (Lay)
Legal Adviser:	Mr David Marshall
Persons present and capacity:	Mr Benjamin Jowett (ACCA Case Presenter) Ms Nikita Apostol (Hearings Officer) Ms Chahat Gupta (ACCA Student) Mr Zaidul Hasan (Interpreter for Hindi)
Summary:	Removed from the student register
Costs:	£150

1. The Committee heard an allegation of misconduct against Ms Gupta. Mr Jowett appeared for ACCA. Ms Gupta (who was in India) was present and represented herself through an Interpreter. The time in India was 4 hours, 30 minutes ahead of UK time (BST) so the hearing started at 08:30 UK time (13:00 pm in India).
2. The Committee had a main bundle of papers containing 153 pages, a completed Case Management Form of 22 pages and a Service bundle containing 22 pages

PRELIMINARY APPLICATION

3. At the start of the hearing Mr Jowett applied to amend Allegation 3(a). Originally this referred to a breach of 'Examination Regulation 2 by failing to comply with instructions issued by ACCA personnel (as per the Student Information Sheet)'. Mr Jowett applied to amend this to a breach of 'Examination Regulation 1 by failing to comply with the **Examination Guidelines**'. He also wished to amend a mistake in that 3(a) referred to 'his exam' when it should have been 'her exam'.
4. The Committee considered that these were minor amendments which could not prejudice Ms Gupta in the conduct of her defence. Ms Gupta did not object to the amendments. The Committee allowed the amendments.

ALLEGATION(S)/BRIEF BACKGROUND

5. Ms Gupta became a registered student of ACCA on 25 November 2020. On 10 June 2021, she sat ACCA's Financial Reporting Examination. The exam was computer-based and remotely invigilated. She took the exam in a place of her choosing using her own laptop with integrated camera. ACCA uses a contractor called ProctorU based in the USA to supervise such exams. ProctorU assigns people to invigilate the exams. They refer to these people as 'Proctors'. The Proctors for Ms Gupta's exam had control of her laptop and access to its camera and screen throughout the exam. The video and audio from the laptop was recorded. The exam ran for about two and a half hours until a Proctor became suspicious and terminated it.
6. Ms Gupta faced the following allegations (as amended):

Allegations

Ms Chahat Gupta ('Ms Gupta'), ACCA student on 10 June 2021, during a remotely invigilated Financial Reporting examination ('the exam'):

1. Engaged in improper conduct designed to assist her in her exam attempt in that she:

- i. Caused or permitted a third party to be present;
 - ii. Caused or permitted that third party to provide assistance to her;
 - iii. Communicated with that third party during all or part of the exam.
2. Took photographs during the exam or allowed a third party to do so.
3. Ms Gupta's conduct referred to in paragraph 1 and 2 above was in breach of:
 - a) Examination Regulation 1 by failing to comply with the Examination Guidelines during the exam, in that she failed to ensure no one else was around her in the room where she sat her exam; and/or
 - b) Examination Regulation 10; and/or
 - c) Examination Regulation 16.
4. Further, Ms Gupta's conduct as referred to in paragraphs 1 and/or 2 above was:
 - a) Dishonest, in that Ms Gupta sought to obtain an unfair advantage in the exam by obtaining assistance from a third party; or in the alternative,
 - b) Failed to act with integrity.
5. Contrary to Examination Regulation 1, failed to comply with the Examination Guidelines in that she had at her desk, and/or on or about her person, an unpermitted item, a silver flask.
6. By reason of her conduct, Ms Gupta is:
 - a) Guilty of misconduct pursuant to byelaw 8(a)(i), in respect of any or all of the matters referred to above; or, in the alternative,
 - b) Liable to disciplinary action pursuant to byelaw 8(a)(iii), in respect of breach of the Exam Regulations as referred to in allegations 3 and 5.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

7. The Committee did not invite admissions from Ms Gupta since English was not her first language and the Committee was not confident that she fully understood the issues. It therefore required ACCA to prove all the facts.
8. Mr Jowett drew the Committee's attention in particular to the 'chat log' of communications

between the Proctor and Ms Gupta during the exam, a report from the Proctor, translations of speech recorded during the exam and a number of still images from the video recording. He also arranged for sections of the video to be played. He submitted that the evidence was sufficient to prove the alleged facts.

9. Ms Gupta gave brief evidence, was cross-examined and answered questions from the Committee. She fully accepted that there was a person present with her for at least part of the exam. She said it was [Private], 'Person A', then aged about 18 or 19, who was helping her with the router because the internet connection was poor. She denied any form of cheating.
10. Person A was not available on the first day. Therefore, at the end of Ms Gupta's evidence, the Committee adjourned so that Person A could give evidence at 08:00 am UK time (12:30 pm Indian time) on the second day. Person A did give evidence, was cross examined, and questioned by the Committee. Their evidence was vague on details, but Person A said they were present while Ms Gupta was taking the exam for a substantial period – Person A said 30 to 45 minutes – and that they were there to help Ms Gupta with router problems. This involved switching the router off and on again.

Allegation 1

11. Ms Gupta's case was that Person A was present during the exam, they communicated and that Person A assisted her. Person A gave evidence to the same effect. On this basis alone allegation 1 was proved, but the Committee went on to consider whether the assistance was limited to technical problems or related to the examination itself.
12. Ms Gupta denied that Person A was helping her with the exam questions. She said Person A was not capable of helping as they had no knowledge of accountancy. Person A gave evidence to the same effect.
13. The Committee had objective evidence as to what occurred from the translation of the examination recording. This was prepared by an independent body who certified its accuracy. The translation showed a number of exchanges between Ms Gupta and another person or persons throughout the exam, spanning a period of nearly 2 hours. The words spoken all concerned the content of the exam. There was nothing that seemed to relate to problems with a router or anything of that kind.
14. Person A said that they had switched the router off and on again but there was no indication in the records that the connection had been lost at any time. The Committee accepted Mr Jowett's submission that it would have been a very serious matter for ProctorU if the connection had dropped and it would have been reported on. When this was put to Person A, they talked about

using a 'hotspot' but they did not give a plausible explanation of how they could have switched equipment off without causing a break in the connection.

15. The Committee rejected the evidence of Person A. It did not necessarily accept that they were the person present but clearly someone was present. It noted that many of the comments made by 'speaker 2' in the translation related to accountancy matters.
16. **The Committee found Allegation 1 proved in its entirety.**

Allegation 2

17. Ms Gupta denied that any photographs were taken.
18. The evidence for this allegation was a few seconds of the video recording starting at about 01:36:45 into the recording. The Committee studied this carefully and agreed that the video showed an image reflected in Ms Gupta's spectacles showing her laptop screen with an object held in front of the screen. On careful study the object appeared to be a mobile phone. On two occasions there was a flash or momentary brightening of the phone. This corresponded to an exchange of words shown in the translation from 01:35:15 to 01:38:35 which included the word 'question'.
19. The Committee concluded that it was more likely than not that the video showed a mobile phone being used to take a photograph. **The Committee found Allegation 2 proved in its entirety.**

Allegation 3

20. The Examination Guidelines stated:

'During the examination

- *No other person is permitted to enter the room.*
- *You must not communicate with any other person by any means'.*

21. The Examination Regulations stated:

'10. You may not engage in any improper conduct designed to assist you in your exam attempt ... including taking photos of exam questions during the course of the exam, ...

16. Candidates must not talk to, or attempt to communicate with, people other than the exam supervisor/s, invigilator/s or proctor/s for the duration of the exam'.

22. The findings under Allegations 1 and 2 mean that Ms Gupta was clearly in breach of the

Regulations as alleged. **The Committee found Allegation 3 proved in its entirety.**

Allegation 4

23. Having found Allegations 1 to 3 proved and having concluded that the person or persons present during the exam were there to provide assistance in relation to the questions, the Committee concluded that Ms Gupta was attempting to cheat in the exam. It rejected her alternative version of events, and that of Person A, as being incompatible with the records of the exam. The Committee was satisfied that Ms Gupta was dishonest. **The Committee found Allegation 4(a) proved.** Allegation 4(b) was in the alternative and did not need to be considered.

Allegation 5

24. ACCA's case was that the flask shown in the video was unauthorised. It did not allege that it was or could be used for cheating.
25. Ms Gupta did not deny that she had with her at the desk a metal flask of water to drink. She made no secret of it and openly drank from it on camera. It was clearly shown in the video and the Proctor did not intervene. Ms Gupta said it was a flask to keep the water cool as it was summer in India at that time.
26. The Examination Guidelines stated:

'What items are permitted at your desk?'

- *A small bottle of water all labels removed. No other drinks or food are permitted...'*

27. The Legal Adviser referred the Committee to the Oxford English Dictionary which defined 'bottle' as

'1. a. A container with a narrow neck and wider body, for holding or storing liquids, pills, etc., now usually made of glass or plastic, but formerly typically of leather, wood, earthenware, or metal.'

28. The Committee considered that the flask was a 'bottle' within this definition. It was a vessel to hold water for drinking during the exam. It appeared to be a vacuum flask to keep the water cool. It had no labels or markings. Whether it was 'small' would depend on the amount of water that it would be reasonable for a candidate to have with her during an exam of more than two and a half hours in summer in India. The Committee could not judge that, but it was not persuaded that there was any breach of the Regulations or Guidance. **The Committee found Allegation 5 not proved.**

Allegation 6

29. The Committee made a judgement as to whether the facts found proved amounted to misconduct. It had no doubt that they did. Cheating in an exam is one of the most serious types of improper behaviour that is open to a student. As Mr Jowett said, '*cheating undermines the integrity of the qualification and the integrity of the exam*'. **The Committee found that Ms Gupta was guilty of misconduct.**
30. Having found misconduct, it was not necessary to consider the alternative alleged in Allegation 6(b).

SANCTION(S) AND REASONS

31. Having found the allegations proved, the Committee went on to consider what sanction, if any, to impose. In doing so it took into account ACCA's Guidance for Disciplinary Sanctions and bore in mind the principle of proportionality.
32. The Committee first sought to identify aggravating and mitigating factors.
33. Cheating in an exam and dishonesty are extremely serious matters.
34. Mitigating factors included the fact that Ms Gupta was of previous good character. However, she had been a registered student for less than a year at the time of the misconduct. She had cooperated with the investigation, although this Committee has rejected most of the version of events she gave to ACCA.
35. The Committee was unable to credit Ms Gupta with any insight into her failings. She had denied the facts throughout and had called Person A to give evidence which the Committee rejected.
36. In view of the seriousness of the misconduct in this case, the Committee was satisfied that it was necessary to impose a sanction. The Committee considered the available sanctions in order of seriousness.
37. In relation to the sanction of admonishment few, if any, of the suggested factors were present. The same applied to the next sanction, reprimand. The Guidance stated that the sanction of reprimand would usually be applied in situations where the conduct is of a minor nature. That was not the case here where, as already stated, the matters found proved were serious.
38. The Guidance stated that the next sanction, severe reprimand, could be applied to severe misconduct where '*there are particular circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public, and there is evidence of the*

individual's understanding and appreciation of the conduct found proved'. In this case, there were no relevant admissions and no insight. The Committee was satisfied that a severe reprimand would be far from adequate to mark the seriousness of the matter.

39. The Committee next considered the sanction of removal from the student register. The Committee considered that Ms Gupta's behaviour was fundamentally incompatible with registration as an ACCA student. Most of the factors set out in the Guidance were present. The Committee was satisfied that removal was the minimum sanction it could impose.
40. The Committee did not consider it necessary to extend the minimum period before Ms Gupta could apply to be readmitted.

COSTS AND REASONS

41. Mr Jowett applied for costs totalling £10,214. He acknowledged that the figure was high but submitted that it was justified by the time needed to examine lengthy exam records. He accepted that the estimated costs of today's Hearing could be reduced to reflect an early finish. He acknowledged that a precise calculation of costs could be eclipsed by a consideration of Ms Gupta's ability to pay.
42. Ms Gupta made no submissions on costs but submitted an email in relation to her means with an attached statement of financial position. She said '*All my savings are already finished in this course, classes and fees, so i don't think i can pay anything for this.*' Mr Jowett said that he had no basis to challenge the figures set out.
43. The Committee considered that the proceedings had been properly brought and that ACCA was entitled, in principle, to a contribution to its costs.
44. However, the Committee accepted that Ms Gupta would be unable to make a substantial contribution to those costs given her very limited means. [Private]. The Committee concluded that she could only afford a nominal sum which it assessed at £150.

EFFECTIVE DATE OF ORDER

45. This decision will take effect at the end of the appeal period in the normal way.

ORDER

46. The Committee **ordered** as follows:
 - (a) Ms Chahat Gupta shall be removed from the student register;

(b) Ms Chahat Gupta shall make a contribution to ACCA's costs in the sum of £150.

Mr Michael Cann
Chair
26 April 2023