

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Harsh Kumar Kothari

Heard on: Thursday, 03 August 2023

Location: Remote via Microsoft Teams

Committee: Mr Maurice Cohen (Chair)
Mr Peter Brown (Accountant)
Ms Catherine Brown (Lay)

Legal Adviser: Mr Robin Havard

Persons present

and capacity: Mr Alex Mills (ACCA Case Presenter)
Ms Lauren Clayton (Hearings Officer)
Mr Harsh Kumar Kothari (Student Member)
Mr Zaidul Hasan (Interpreter for Hindi)

Summary Removed from the student register

Costs: £1,000

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ALLEGATIONS

Mr Harsh Kumar Kothari (Mr Kothari), a student member of the Association of Chartered Certified Accountants ('ACCA'):

1. On 29 May 2021, failed to comply with instructions issued by ACCA personnel (as per the Student Information Sheet) before a remotely invigilated Financial Accounting exam, in that he failed to ensure he was in a room with no-one else around him, contrary to Examination Regulation 2.
2. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), Mr Kothari failed to co-operate with the investigation of a complaint, in that he did not respond to any or all of ACCA's correspondence sent on:
 - (a) 22 June 2021;
 - (b) 14 July 2021;
 - (c) 29 July 2021.
3. By reason of his conduct, Mr Kothari 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/or 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 above.

DECISION ON FACTS, ALLEGATIONS AND REASONS

1. In reaching its findings, the Committee had relied on the following documents: a hearing bundle (pages 1 to 112); a service bundle (pages 1 to 23); video footage of the examination on 29 May 2021, and a correspondence bundle (pages 1 to 7).

2. When it came to the stage in the proceedings for Mr Kothari to provide his account of what had occurred, both in respect of the exam and his failure to respond to correspondence, he was given the choice whether to provide evidence to the Committee or make submissions. He was advised of the difference between the two options and the risk that, if he decided to make submissions as opposed to give evidence, the Committee may place less weight on what he had to say. Mr Kothari decided to make submissions and the Committee took careful note of what he had to say. It also listened to the submissions of Mr Mills. Finally, the Committee listened to legal advice, which it accepted.

Allegation 1

3. Mr Kothari admitted the facts of this allegation and, therefore, the Committee found it proved.
4. The Committee made the following further findings of fact in respect of allegation 1. In doing so, the Committee relied upon the email correspondence and documents contained in ACCA's bundle and noted the Incident Report provided by the Proctor (i.e. a remote exam invigilator) prepared following the exam.
5. Prior to the hearing, it had viewed the video footage of the exam taken on 29 May 2021 and considered the screenshots taken from the video footage as contained in the bundle and ACCA's report.
6. In the course of the hearing, Person A, a paralegal at ACCA, assisted the Committee by playing parts of the video footage forming part of ACCA's evidence.
7. On the basis of the evidence and submissions it had heard, seen and read, the Committee made the following additional findings of fact.
8. Examination Regulation 1 provides as follows:

"You are required to adhere at all times to the examination regulations. If you are found to be in breach of any of these regulations or fail to adhere to the guidelines below, you may become liable to disciplinary action, pursuant to ACCA Bye-law 8, which could result in your removal from the student register."

9. Examination Regulation 2 provides as follows:

"2. 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. Failure to comply with these instructions may result in the termination of your examination and potential disciplinary procedures being invoked."

10. The Committee found that, prior to the date of the exam, Mr Kothari had been sent a Student Information Sheet which set out the Examination Guidelines. In booking an exam, Mr Kothari confirmed that he had read the Information Sheet and agreed to comply with all the requirements it contained. It also warned Mr Kothari that if he did not comply with its content, it may result in disciplinary action. An extract from the relevant Guidelines is set out below.

PRIOR TO EXAM STARTING

- *You will have a government-issued I.D. (Passport, Driving Licence or Government Issued Photographic Identification) ready and be located in a private, well-lit room with no one else around you."*
11. On 25 February 2020, ACCA registered Mr Kothari as a student. As such, he is bound by ACCA's Byelaws and Regulations.
12. On 29 May 2021, Mr Kothari took the FFA Financial Accounting examination (the 'Exam') remotely. The Exam launched but was terminated by the Proctor who subsequently filed an Incident Report in respect of conduct observed (third party in testing area) before the Exam.

13. The Proctor's incident report states:

"During the start-up, another person was seen while doing the monitor scan. An Intervention specialist was invited and re-secured the testing area. No other person was seen. Allowed the test taker to proceed with the process and gave a final warning.

However, upon further observation, when the test taker was asked for another camera pan, the other person was now visible in the camera view. This can be observed at 00:53:45 in the session recording. In addition, the door behind the test taker can be seen suddenly opened. The specialist joined the session, terminated the exam, and advised the test taker to contact their Institution for further instructions."

14. The Committee had viewed the video footage. Based on the video and the images taken from it as set out below, the Committee found that, prior to and during the Exam, an unauthorised third party was in the room in which Mr Kothari was taking the Exam:

- 08:14 Student uses mobile phone to show his workstation, a third party is observed sitting in the testing room.
- A few seconds after the third party is seen, he crouches down in front of the desk.
- 09:08 Student shows workstation again, this time third party cannot be seen.
- 09:50 – 11:00; Student performs a camera pan.
- Student: 'yes sir' to Proctor.
- Student: 'this is the door'.

- Proctor speaks to student verbally.
- Student: 'yes sir'. Proctor appears to ask student to perform another camera pan.
- Student clears his throat and the third party's head can be seen at the bottom of the screen (at 10:50).
- 36:05 – 36:35 a camera pan is conducted, and Mr Kothari shows the Proctor under his table at 41:30.

15. Minutes after this, the following is recorded in the chat log:

- *1:29 AM [Person B]: As a reminder, another person in the room, looking ofscreen (sic) and being out of the camera angle is not permitted during this exam.*
- *1:29 AM [Person B]: If any of this behavior occur (sic) we might terminate your session and you will not be able to complete your exam.*
- *1:29 AM HARSH KUMAR KOTHARI: ok*
- *1:30 AM [Person B]: This will serve as a Final warning ...*

16. Based on further observations of the video, the Committee found as follows:

- 52:10 Proctor speaks to student verbally Student: 'yes, yeah what, okay sir'. Student shows Proctor the other side of the desk. When the student shows the other side of the desk the third party can be seen in the camera angle of the students arm and body on the floor hiding (at 53:27).
- Between 59:00 and 1:00:00, is when it appears the Proctor informed Mr Kothari the exam was terminated.

17. The Committee was satisfied that the video evidence shows the presence of a third party in the testing area where Mr Kothari intended to take the exam. Taking account of his behaviour, the Committee found that the third party was attempting to avoid being seen. It was of particular concern that the third party was first observed shortly after 8 minutes of the video footage at which time Mr Kothari was reminded of his obligation to ensure that no one else was in the room during the exam. Notwithstanding that, the third party was again observed in the room at approximately 53 minutes 26 seconds of the video footage i.e. some 45 minutes later.
18. Mr Kothari stated in his submissions to the Committee that the person who can be seen in the room was [Private] who was there to support him. Mr Kothari said that he was very nervous in taking the exam, that it was during the pandemic and that India was in lockdown. He subsequently said that he had told [Private] that they should not be there. However, the Committee did not find Mr Kothari's account to be credible in that, when he originally provided an explanation to ACCA for the presence of a third party in the room, he stated in his email of 4 June 2021 as follows:
- "I'm really Sorry for inconvenience of your examination regulation. But i have to inform you that there was some shadow of another person who was standing behind the transparent glass window and no one was there in that room with me. So, i request you to reschedule my exam of F3 Paper or refunded the money back".*
19. On the basis of its findings, the Committee was satisfied that Mr Kothari had failed to ensure that he was in a room with no-one else around him, and he had therefore failed to comply with the instructions contained in the Student Information Sheet issued to him before the Exam. Consequently, he was in breach of Examination Regulation 2.
20. The Committee therefore found allegation 1 proved.

Allegation 2

21. Mr Kothari had not provided any response to the correspondence sent to him during the course of the investigation. All emails were sent to Mr Kothari at an email address he registered with ACCA. The email address had not changed throughout the course of the investigation. None of the emails had been returned or bounced back into the case management system. Indeed, as noted below, Mr Kothari sent emails to ACCA on 4 and 11 June 2021 using that address.
22. On 3 June 2021, ACCA's CBE Delivery team emailed Mr Kothari informing him that his conduct would be referred to Professional Conduct Department.
23. On 4 June 2021, prior to receiving the first letter from ACCA's Investigations Department, Mr Kothari sent an email to ACCA. As stated above, he maintained that no one was in the room with him and that there was a shadow of a third party who was standing behind a transparent glass window.
24. On 8 June 2021, ACCA sent a letter to Mr Kothari's registered email address informing of the referral to the Investigations Department.
25. On 11 June 2021, Mr Kothari sent an email to ACCA's CBE Delivery team asking if he will have to pay his fees again to reschedule his terminated exam.
26. On 22 June 2021, ACCA sent a letter as an attachment to Mr Kothari's registered email address. The letter informed Mr Kothari of the investigation into his conduct in the exam on 29 May 2021. The Proctor's Incident Report in respect of the exam was attached as an appendix. It included screenshots taken from the video footage of the exam. Within this letter, Mr Kothari was asked a series of questions about his 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."

27. Mr Kothari was required to respond by 13 July 2021. Mr Kothari failed to reply.
28. On 14 July 2021, ACCA sent another letter to Mr Kothari's registered email address reminding him of his obligation to co-operate with the investigation and seeking his response by 28 July 2021. Mr Kothari failed to reply.
29. On 29 July 2021, ACCA sent another letter to Mr Kothari's registered email address reminding him of his obligation to co-operate with the investigation and seeking his response by 5 August 2021. Mr Kothari failed to reply.
30. The email address that was used by ACCA to communicate with Mr Kothari had remained the same until around 9 May 2023 when his ACCA registered email address was updated. The Committee noted that it was confirmed by ACCA by email of 26 November 2021 that the email address, namely [Private] was the email address on ACCA's register throughout the material time. More particularly, the email address to which the emails were sent was the same address used by Mr Kothari when he sent his emails to ACCA on 4 and 11 June 2021.
31. When giving his explanation during the course of the hearing, Mr Kothari suggested initially that he panicked and was very afraid because the exam had been terminated. Subsequently, he suggested that he had not checked his emails for a long time and had forgot his password. Taking account of the fact that he had sent emails to ACCA on two occasions shortly before the first email of 22 June 2021, the Committee did not find the suggestion by Mr Kothari that he had not checked his emails and had forgotten his password to be credible.
32. The Committee was satisfied that the emails of 22 June 2021 and 14 and 29 July 2021 had been received by Mr Kothari and that he had failed to respond.

This amounted to a failure to cooperate with ACCA in the course of its investigation and on this basis, the Committee found allegation 2 proved.

Allegation 3(a)

33. In relation to allegation 1, the integrity of the examination system, and the importance of students complying fully with ACCA's requirements regarding the examination process, particularly when students were given the opportunity to take exams online, was fundamental to the reputation of ACCA and the accountancy profession.
34. The Committee had taken account of its findings that the third party had been in the room on two occasions despite clear warnings having been given by the Invigilator. Mr Kothari had also provided an inconsistent account of what had occurred. The Committee was satisfied that he was guilty of misconduct in that, in the Committee's judgement, it brought discredit to Mr Kothari, the Association and the accountancy profession.
35. In respect of allegation 2, the Committee had found that, despite ACCA providing a number of reminders of his obligation to cooperate and warnings of potential consequences of his failure to do so, Mr Kothari had failed persistently to cooperate with ACCA and to respond to correspondence.
36. The need for members, including student members, to engage and cooperate with their regulator was fundamental. A failure by members to do so meant that ACCA's ability to regulate its members in order to: ensure proper standards of conduct; protect the public, and to maintain its reputation was seriously compromised.
37. The Committee found that the failure of Mr Kothari to cooperate with his regulator also amounted to misconduct in that such failure brought discredit to himself, ACCA and the accountancy profession.
38. Therefore, the Committee found allegation 3(a) proved.

Allegation 3(b)

39. On the basis that this allegation was pleaded in the alternative to allegation 3(a), the Committee made no finding in respect of it.

SANCTION AND REASONS

40. 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 also listened to the submissions of Mr Mills, and legal advice from the Legal Adviser which it accepted.
41. 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.
42. 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.
43. The Committee considered whether any mitigating or aggravating factors featured in this case.
44. The Committee accepted that there were no previous findings against Mr Kothari. However, the Committee took into consideration the fact that, at the time the exams took place, Mr Kothari had only been a student member since 25 February 2020 i.e. approximately fifteen months before he sat the exam.
45. Whilst Mr Kothari had only engaged in the proceedings at a very late stage, the Committee took into consideration the fact that he had attended the hearing

and had provided admissions to the allegations 1 and 2. He had also apologised for his conduct.

46. The Committee had no information regarding the personal circumstances of Mr Kothari nor had it been provided with any testimonials or references as to Mr Kothari's character.
47. The Committee found Mr Kothari's conduct to be aggravated in the following ways.
48. In the judgement of the Committee, Mr Kothari had shown limited insight into his behaviour and he had not shown the level of cooperation in the course of ACCA's investigation that should be expected from a student member.
49. On the basis of its findings, the Committee concluded that neither an admonishment nor a reprimand would represent a sufficient and proportionate outcome. Neither sanction would adequately reflect the seriousness of the Committee's findings.
50. The Committee then considered whether a severe reprimand would be an appropriate sanction. Again, taking account of the seriousness of its findings, and reflecting on the criteria suggested in the Guidance, the Committee did not consider that a severe reprimand would be sufficient or proportionate.
51. Mr Kothari had been found to be in breach of the Examination Regulations and his conduct had continued despite clear warnings having been given to him by the Invigilator. This was conduct which was fundamentally incompatible with being a student member of ACCA.
52. Mr Kothari had also failed persistently to cooperate with his regulator, ACCA, in respect of an investigation of potentially serious allegations. His lack of engagement in relation to the investigation of his conduct during an exam represented conduct which was also fundamentally incompatible with being a student member of ACCA. His lack of engagement and his failure to show any

insight or contrition for his lack of cooperation, led the Committee to conclude that, currently, there was no guarantee that Mr Kothari would behave in a manner expected of a member of ACCA.

53. The Committee had considered whether there were any reasons which were so exceptional or remarkable that it would not be necessary to remove Mr Kothari from the student register but could find none.
54. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Mr Kothari shall be removed from the student register.

COSTS AND REASONS

55. The Committee had been provided with a simple costs schedule (page 1) and a detailed costs schedule (pages 1 to 2) relating to ACCA's claim for costs.
56. The Committee concluded that ACCA was entitled to be awarded costs against Mr Kothari, all allegations having been found proved. The amount of costs for which ACCA applied was £5,568.50. The Committee did not consider that the claim was unreasonable.
57. Despite being invited and encouraged to do so by ACCA in the Notice of Proceedings and also the most recent emails, Mr Kothari had not provided ACCA with any documentary evidence of his means. The Committee was satisfied that, in the correspondence sent to him, Mr Kothari had been warned at the outset of the importance of providing details of his financial circumstances and of ACCA's intention to apply for costs.
58. However, it had listened to Mr Kothari's submissions regarding his financial circumstances, to include the fact that he [Private].

59. In all the circumstances, and in exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £1,000.00.

EFFECTIVE DATE OF ORDER

60. The Committee had considered whether the order should have immediate effect. However, ACCA did not seek such an order and, taking account of the fact that Mr Kothari's removal is from the student register, the Committee did not consider that he presented a current risk to the public. It therefore concluded it was not in the interests of the public to make an order which takes effect immediately.
61. The Committee decided that this order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

Mr Maurice Cohen
Chair
3 August 2023