

HEARING

**DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF
CHARTERED CERTIFIED ACCOUNTANTS****REASONS FOR DECISION**

In the matter of: Miss Prakriti Aryal

Heard on: Thursday, 10 August 2023

Location: Held remotely via Microsoft Teams

Committee: Mr Maurice Cohen (Chair)
Ms Andrea White (Accountant)
Mr Damian Kearney (Lay)

Legal Adviser: Ms Tope Adeyemi (Legal Adviser)

**Persons present
and capacity:** Mr Alex Mills (Case Presenter on behalf of ACCA)
Ms Lauren Clayton (Hearings Officer)

Summary: Removal from the student register

Costs: None

INTRODUCTION

1. The Disciplinary Committee (“the Committee”) met to hear allegations against Miss Prakriti Aryal. Miss Aryal did not attend and was not represented. The papers the Committee had before it consisted of a main bundle numbered 1 to

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83, a service bundle numbered 1 to 21, a tabled additional bundle numbered 1 to 3 and a 2-page memorandum and agenda.

PRELIMINARY MATTERS

SERVICE OF PAPERS

2. The Committee first considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (“the Regulations”). The Committee took into account the submissions made by Mr Mills on behalf of ACCA and the advice provided by the Legal Adviser.
3. Included within the bundle was the Notice of Hearing dated 13 July 2023, thereby satisfying the 28-day notice requirement, which had been sent to Miss Aryal’s email address as it appears on the ACCA register. The Notice included correct details about the time, date and remote venue of the hearing, it also notified Miss Aryal of the option to attend the hearing by telephone or video link and to be represented if she wished. Additionally, the Notice provided details about applying for an adjournment and the Committee’s power to proceed in her absence if considered appropriate. A delivery receipt dated 13 July 2023, confirming delivery of the Notice, was also provided.
4. The Committee, having considered the relevant documents, was satisfied that Notice had been served in accordance with the Regulations.

PROCEEDING IN ABSENCE

5. Having concluded that proper notice had been served in accordance with the rules, the Committee went on to consider whether to exercise its discretion to proceed in the absence of Miss Aryal.
6. The Committee had been provided with a note of a call between Miss Aryal and ACCA’s Hearing’s Officer dated 01 August 2023. The note recorded that Miss Aryal confirmed that she was aware of the hearing, would not be attending and was content for the hearing to take place in her absence. The Committee also

had sight of an email from Miss Aryal dated 03 August 2023. Within the email of 03 August, Miss Aryal provided some details about her circumstances and stated again that she would not be attending the hearing. In light of the note and the email, the Committee was of the view that Miss Aryal's attendance was unlikely to be secured through an adjournment. It considered she had made it clear she would not be attending the hearing and appeared to have voluntarily absented herself.

7. Balancing the interests of Miss Aryal against the interests of ACCA, the Committee concluded that in all the circumstances it was in the interests of justice that the matter proceed expeditiously notwithstanding the absence of Miss Aryal.

APPLICATION TO AMEND

8. An application was made by ACCA to amend allegation 5. It was proposed that the word 'was' be moved to allegation 5a. and that the words '*such conduct*' be deleted from allegation 5b. Mr Mills submitted that the amendments went to form and were intended to add clarity. They did not, in Mr Mills submission, amount to a substantive change to ACCA's case.
9. Regulation 10(5) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ('CDR') allows the Committee at any stage, upon the application of either party or on its own motion, to amend the allegations provided the relevant person is not prejudiced in the conduct of their defence.
10. The Committee was satisfied that the proposed amendments did not cause prejudice or unfairness to Miss Aryal and it was therefore content to accede to the application.

ADMISSIBILITY OF THE REFERRAL EVIDENCE

11. ACCA sought to rely on information that it referred to within its bundle of documents as the '*whistle-blower report*'. The report appeared to be the referral that had been made concerning Miss Aryal's conduct during the July 2022 FA exam. A copy of the report was not before the Committee; however references

were made to its content in the ACCA's bundles. The Committee were made aware that the author of the report wished to remain anonymous; had notified ACCA of concerns and attached 38 images from the FA exam of which from three, Miss Aryal's unique identification number, could be seen. ACCA invited the Committee to consider as a preliminary point whether the evidence could be admitted.

12. Given that the author of the whistle blower report was unknown and would not be attending to give evidence, the Committee considered that the evidence could be described as 'hearsay'. Regulation 12 (2) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ('CDR') allows the Committee, "*subject to the requirements of justice and fairness*", to admit evidence "*Whether or not that evidence would be admitted in a court of law*". The Regulations go on to add that the "*Disciplinary Committee shall take into account the fact that any disputed oral evidence of a witness has not been tested in cross-examination when considering what weight, if any, should be attached to it*". The Committee also took into account the case law regarding the admissibility of hearsay, in particular the guidance referred to by the Legal Adviser as set out in the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 Admin.
13. The Committee acknowledged that there would be no opportunity to question the author of the report. It was mindful however that the actual report and any comments made in it had not be shared with the Committee. All that had been provided were the images that had been attached. Also relevant was Miss Aryal's admission within her responses to ACCA that she had a mobile phone with her during the exam and that she had taken the images. The only matter therefore that appeared to be disputed related to allegation 3, which concerns how the images came to be in the possession of a third party who was then able to submit them to ACCA. The Committee did not consider the information from the whistle-blower was central to the determination of the issues relevant to allegation 3 having regard to the other evidence available on the point.

14. Overall, the Committee considered it was entirely appropriate to admit the evidence arising from the report. It was neither sole or decisive and the Committee would be able to decide what if any weight to attach to it.

ALLEGATIONS

15. The allegations faced by Miss Aryal, as amended are set out below.

Miss Prakriti Aryal, an ACCA student, during a Financial Accounting (FA) exam taken on 13 July 2022 (“the exam”):

1. Used a mobile phone capable of taking photographs.
2. Further to the matters referred to in allegation 1 took photographs of her exam questions (‘the photographs’) during the exam.
3. Further to the matters referred to in allegations 1 and 2 above caused or permitted the photographs to be shared with a person or persons unknown.
4. By the reason of the matters referred to above, Miss Aryal is in breach of one or more of:
 - a. Exam Regulation 5 in respect of allegation 1
 - b. Exam Regulation 12 in respect of allegation 2
 - c. Exam Regulation 10 in respect of allegation 3
 - d. Exam Regulation 14 in respect of allegation 3
5. Further, Miss Aryal’s conduct as referred to in allegations 1 to 3 above:
 - a. Was dishonest in that she took the photographs referred to in order to review the exam questions as a revision aid if it was necessary for her to re-sit the exam and thereby obtain an unfair advantage and/or shared the photos to give an unfair advantage to other unknown exam entrants, or in the alternative

- b. Demonstrates a failure to act with integrity.
- 6. By reason of her conduct, Miss Aryal is guilty of misconduct pursuant to:
 - a. Byelaw 8(a)(i) or in the alternative
 - b. Byelaw 8(a)(iii) in respect of breaches of the exam regulations as set out in allegation 4 above.

BACKGROUND

- 16. Miss Aryal registered as a student with ACCA in May 2022. On 13 July 2022, Miss Aryal sat the ACCA's Financial Accounting (FA) exam ('the Exam').
- 17. The day after the exam on 14 July 2022, ACCA received an email from an individual who wished to remain anonymous, notifying it of concerns and attaching 38 images from the FA exam. The matter was investigated. The 38 images were reviewed, and it was noted that Miss Aryal's unique ACCA identification number was visible on 3 of the images. Advice was also received from Person A, ACCA's Exam Production Technician. It was Person A's view that the images were of questions included in the FA exam taken by Miss Aryal on 13 July 2022.
- 18. Miss Aryal was formally notified of ACCA's investigation. She was sent a copy of the photographs and was asked to provide her answers to a series of questions relating to the photographs of the exam questions, and the observations as to her conduct during the exam.
- 19. Miss Aryal responded to ACCA's letters and investigation enquiries. Miss Aryal explained she had health and I.T issues on the day of the exam. She apologised and made reference to her behaviour being unethical stating: *"I performed unethical behaviour [Private], I though (sic) I wouldn't pass my exam, [Private] so, I wouldn't afford to fail my exam. I am very sorry for my shameful and unethical behaviour"*.
- 20. In further correspondence with ACCA in October 2022, Miss Aryal admitted that she had with her, during the exam and/or in the exam room, a mobile phone

with a camera and that she took photographs of exam questions during the exam. She explained that she did not permit a third party to take photographs during her exam; that she did not share pictures of her question paper; that she was not seeking assistance during her exam; that she deleted the photographs/images of the exam question after receiving notice of ACCA's complaint; that there was no-one and no third party with her during her "exam period"; that it was her mobile phone with her and she stated, "Yes, I read the examination regulations and guidelines before sitting the exam."

21. Miss Aryal provided further explanations about her conduct during the exam in correspondence to ACCA in October 2022, where she stated: *"I kept my mobile phone with me during my fa exam because I was very nervous [Private] during my exam and I felt, If I can't pass my exam this time, picture of my fa exam which I clicked will be helpful for my next Fa exam"*.
22. In answer to the question of where she kept her mobile phone during the exam, Miss Aryal explained, *"My mobile was with me inside my pant (sic) during my fa exam."* When asked how many photographs of questions she took during the FA exam, she explained, *"I clearly don't remember how many pictures, I took as it already has been more than 3 months. Maybe I clicked about 15/16 pictures."* When asked to explain the reasons why she took photographs of questions during her FA exam, she explained, *"As, I mentioned earlier, I thought even I fail this time, I could get idea about how questions are asked and I can be prepared for next time and these photos of exam could help me to get prepared for next time."*
23. Miss Aryal was asked to explain how the photos of her FA examination came into the possession of ACCA if she had not shared the photos with anyone else. Miss Aryal explained, *"When I, entered my examination hall, I felt uncomfortable in my stomach after few seconds questions in front of my computer became blur [Private]... and I asked my invigilator to bring me my medicine from my bag which was prescribed by my family doctor. And when my invigilator wasn't there I clicked pictures of my fa exam. After invigilator came he gave me medicine and I took them and after few minutes I felt little comfortable and I continue my fa exam. I noticed that exam questions were not much difficult as I thought they will be, so I didn't want to take any risk keeping*

my mobile with me (If my invigilator saw me with my mobile, I was sure [they] will kick me out of my exam hall). So, I asked my [them] (sic) (my invigilator) to take bathroom break with in 1hr of my examination. [They] gave me permission to take break [Private]. Then, I ran and came to my Class which was next to washroom and kept my mobile there. I remember it was 1st bench where I kept my mobile (I don't use lock in my mobile as [Private] and I use same mobile). There was no one in my class during that period, all students and teachers were celebrating teacher's Day program at ground floor and I was taking my exam at 2nd floor. I clearly was shocked to know that my exam pictures were circulating over internet. I haven't shared my exam pictures to anyone. I know and I admit I have performed unethical behaviour by taking mobile and click picture but I haven't shared it to anyone. May be someone have used my mobile which I kept in my classroom and may be this was the reason for circulation of my papers (sic)."

24. As part of its investigation, ACCA asked the anonymous whistle-blower if they would be willing to provide a witness statement for the purposes of the investigation. The whistle-blower declined to disclose their name and/or the name of the person who sent them the 38 photographs or the details of the conversation with the person who had sent them the photographs.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

25. The Committee considered with care all the evidence presented and the submissions made by Mr Mills. It accepted the advice of the Legal Adviser and bore in mind that it was for ACCA to prove its case and to do so on the balance of probabilities. In respect of allegations 1 and 4(a) the Committee noted the reverse burden provided for by Exam Regulation 6(a) which required the student to prove that they did not intend to use the unauthorised material to gain an unfair advantage.

Allegation 1 – Proved

26. In determining allegation 1, the Committee referred to the images of the FA exam questions it had been provided with. Not all were clear, however three did include content that could be read. Those three images featured ACCA's

logo and a serial number towards the top. The Committee had regard to the evidence that the number included in the images was Miss Aryal's unique ACCA student identification number. Also relevant was Miss Aryal's admission within her representations to ACCA that she had taken photographs of the exam questions using her mobile phone. By implication, the Committee found that by accepting she had taken the photographs, Miss Aryal had admitted to using a mobile phone capable of taking photographs during the exam. For all these reasons, the Committee found allegation 1 proved.

Allegation 2 – Proved

27. The Committee found this allegation proved for the same reasons set out in allegation 1. Namely, the Committee had been provided with images of questions from the FA exam that included Miss Aryal's unique student identification number and Miss Aryal had admitted to taking photos during the exam.

Allegation 3 – Proved

28. During the course of ACCA's investigation Miss Aryal was asked a series of questions about the FA exam and her conduct. The questions included how the photos of the FA exam came into the possession of ACCA if she did not share the photos with anyone else. The Committee noted the explanation Miss Aryal had provided as set out in paragraph 23 above.
29. In considering the plausibility of Miss Aryal's account, the Committee noted in particular that there would have been only a small window of time for a third party to have had access to Miss Aryal's phone had she not personally shared the images. Such a person would also have had to realise the significance of the images. This was a proposition that seemed unlikely given the fact many of the pictures were unclear. The Committee also found Miss Aryal's explanation that she had decided to put her phone away once she had taken the photos incredible. There appeared to be no reason for her to take such a step bearing in mind she had already taken the photographs and had previously been able to conceal the phone in her clothing and could have done so again. Overall, the

Committee found Ms Aryal's explanations as to how the images came to be shared inherently implausible. It concluded that the clear inference to be drawn based on the evidence was that Miss Aryal had caused or permitted the photographs to be shared. It follows, therefore, that the Committee found allegation 3 proved.

Allegations 4(a – d) – Proved

30. Allegation 4 engaged ACCA Exam Regulations 5, 12, 10 and 14. The Committee went through each of them in turn, concluding that by reason of the matters found proved, they had all been breached.
31. Exam Regulation 5 lists items that are deemed to be unauthorised and therefore are not permitted within an exam. Amongst the list are electronic devices and mobile phones. Exam Regulation 12 sets out that if a computer – based exam is being taken students are *“not permitted to copy exam content in any manner or take photograph(s) or videos”* of the screen. As the Committee has found that Miss Aryal had a mobile phone in her possession whilst taking the FA exam and that she used it to take photographs of the content of the FA exam, it follows that it finds Regulations 5 and 12 to have been breached.
32. Exam Regulation 10 prohibits the engagement of conduct designed to assist students in their exam attempt or designed to assist *“any other exam entrant in their exam attempt”*. Exam Regulation 14 imposes a prohibition on *“distributing or seeking to exploit for commercial/personal gain and/or any other reason, copies of exam questions or scenarios to any person including other ACCA registered students”*.
33. The Committee have already found, as set out in its reasons concerning allegation 3, that Miss Aryal shared the photos she took. Leading on from these points, the Committee considered first, that through sharing the photos she had distributed them and second, that it could be inferred that Miss Aryal shared the photos in order to assist other exam entrants in their exam. As a result, the Committee found Regulations 10 and 14 to have been breached. Allegation 4 was therefore found proved.

Allegation 5(a) – Proved

34. The Committee moved on to consider whether Miss Aryal acted dishonestly when she took the photographs of the exam questions. The Committee considered that it was widely known that taking photographs of exam questions was not permitted. Miss Aryal in her responses confirmed that she was aware of the exam regulations which prohibited such conduct. It was also noted that Miss Aryal acknowledged that she had concealed her mobile phone in her clothing. The Committee considered that her actions in concealing the phone were consistent with an understanding that she was not supposed to have a mobile phone with her. In all the circumstances, the Committee was satisfied that Miss Aryal's conduct was dishonest. In reaching this decision it was considered that the two-stage test set out in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 was met.

Allegation 5(b)

35. Having found the behaviour amounted to misconduct, it was not necessary for the Committee to also consider whether Miss Aryal failed to act with integrity, since this was alleged in the alternative.

Allegation 6

36. The Committee was satisfied that Miss Aryal's behaviour in taking photographs of exam questions in breach of exam regulations and going on to share them amounted to misconduct. Such behaviour, which the Committee found to be dishonest, fell far below what was expected of a student member. The behaviour was very serious and was of a nature that members of the profession and fellow student members of the profession would regard as deplorable.

SANCTIONS AND REASONS

37. The Committee considered what sanction, if any, to impose, taking into account all the information provided in the bundle of documents, ACCA's Guidance for

Disciplinary Sanctions, and the principle of proportionality. It had also listened to legal advice from the Legal Adviser, which it accepted.

38. 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.
39. 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.
40. Consideration was first given to whether any mitigating or aggravating factors featured in this case. The Committee were informed that there were no previous regulatory findings against Miss Aryal. It took into account however that when Miss Aryal took the FA exam in 13 July 2022 she had only been a student member of ACCA for a short while and the FA exam appeared to be the first exam she had taken. With this in mind, the Committee considered that little weight could be given to the absence of any previous regulatory findings.
41. Regard was had to the early admissions Miss Aryal had made to a number of the allegations quite early on. She had also expressed remorse and demonstrated some insight by accepting that she should not have acted in the way she did. These factors were deemed by the Committee to amount to mitigation.
42. By way of aggravating factors, the Committee noted that Miss Aryal's actions appeared to have been planned. Additionally, the conduct had the potential to cause harm to ACCA's reputation, as the act of photographing the exam questions and sharing them served to undermine the integrity of ACCA's qualification process.
43. The Committee moved on to consider the range of potential sanctions. It concluded that neither an admonishment nor reprimand would adequately reflect the seriousness of its findings. Miss Aryal had wilfully ignored important exam regulations in place to protect the integrity of the ACCA qualification

process. The Committee considered that the public needs to be able to trust future ACCA members in their dealings and have confidence in the ACCA as a regulator. There was also no evidence of any rehabilitative steps taken by Miss Aryal to ensure similar future conduct did not occur.

44. Consideration was next given as to whether a severe reprimand would adequately reflect the seriousness of the case. The guidance states that such a sanction would usually be applied in circumstances where the conduct was not intentional and where there was an appreciation of the seriousness of the conduct found proved. The Committee had found that Miss Aryal's conduct was intentional and that her insight was limited, as a result the Committee was of the view that the criteria for a severe reprimand had not been met.
45. The Committee went on to consider the guidance relating to exclusion from membership. Miss Aryal's misconduct involved dishonesty that had the potential to cause harm. The Committee noted the following within the section of the guidance for disciplinary sanctions that addressed the approach to be taken to dishonesty:

"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.

The Committee should bear these factors in mind when considering whether any mitigation presented by the member is so remarkable or exceptional that it warrants anything other than exclusion from membership or removal from the student register."

46. The Committee had not been presented with any information or mitigation so remarkable as to warrant a departure from the guidance. In all the circumstances the Committee considered exclusion to be the most appropriate and proportionate sanction.

COSTS AND REASONS

47. ACCA applied for costs in the sum of £4,559.50. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing. A simplified schedule was also provided.
48. No detailed information had been provided by Miss Aryal on her financial circumstances, however some information on her means was set out in correspondence. This information included representations that she was [Private]. Miss Aryal also added that she was [Private].
49. The Committee accepted Miss Aryal's representations concerning her circumstances. Therefore, while it considered ACCA's costs had been reasonably incurred, it did not find it appropriate to direct that Miss Aryal pay those costs in light of her limited financial means.

EFFECTIVE DATE OF ORDER

50. 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
10 August 2023