

HEARING

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

In the matter of: Ms Akanksha Kain

Heard on: 7 March 2024

Location: Remotely via Microsoft Teams

Committee: Mr Martin Winter (Chair),
Ms Joanne Royden-Turner (Accountant)
Mr Nigel Pilkington (Lay)

Legal Adviser: Mr Alastair McFarlane

Persons present

and capacity: Mr Ben Jowett (ACCA Case Presenter)
Miss Nicole Boateng (Hearings Officer)
Miss Adaora Onyekwelu (Investigations Officer)

Observers: Ms Joy Julien (Appointments Board)

1. ACCA was represented by Mr Jowett. Ms Kain did not attend and was not represented. The Committee had before it a Bundle of papers, numbered pages 1 – 98, an Additional bundle, numbered pages 1 – 3, a Service bundle, numbered pages 1-20, and a copy of a video recording.

SERVICE/ PROCEEDING IN ABSENCE

2. Having considered the Service bundle, and the Notice of Hearing the Committee was satisfied that notice of the hearing was served on Ms Kain in accordance with the Complaints and Disciplinary Regulations 2014 (amended

1 January 2020) (“CDR”).

3. The Committee next considered whether it was in the interests of justice to proceed in the absence of Ms Kain. The Committee accepted the advice of the Legal Adviser. The Committee was mindful that Ms Kain had a right to attend the hearing and to participate and that the discretion to proceed in her absence must be exercised with the utmost care and caution.

4. The Committee noted that ACCA’s notice was sent on 8 February 2024 to Ms Kain’s email address, offered her the opportunity of attending via video or telephone link, with the costs being met by ACCA. There was no response to the notice and the Hearings Officer attempted to telephone Ms Kain twice on 1 March 2024 and again on 4 March 2024 to ascertain whether she would be attending the hearing. On both occasions there was no answer. Further, chasing emails were sent on the same days as the attempts to contact Ms Kain by telephone (1 and 4 March 2024). On 5 March 2024 the Hearings Officer sent the link for the video hearing. There were no responses to any of these emails. It noted there had been no engagement from Ms Kain since August 2022. The Committee was satisfied that all reasonable attempts have been made to secure Ms Kain’s attendance/participation at the hearing. The Committee was satisfied that Ms Kain has voluntarily waived her right to attend and was not persuaded that any adjournment would increase the chance of Ms Kain attending or participating further in the case. On the information before it and bearing in mind its duty to ensure the expeditious conduct of its business and the wider public interest, the Committee was satisfied that it was in the interests of justice to proceed in the absence of Ms Kain. The Committee reminded itself that her absence added nothing to ACCA’s case and was not indicative of guilt.

ALLEGATIONS

1. Ms Akanksha Kain, an ACCA student in respect of her FBT- Business and Technology exam on 14 May 2022 (the exam)
 - a) Failed to adhere to ACCA’s Exam Guidelines and the exam proctor’s instructions by not moving her mobile phone out of arm’s reach, contrary to Exam Regulation 1 and Exam Regulation 2.

- b) Was in possession of more than 2 sheets of paper during the exam, contrary to Exam Regulation 1.
 - c) Was in possession of unauthorised materials in the form of notes during the exam, contrary to Exam Regulation 4.
 - d) Was speaking aloud and communicating with another person during the exam, contrary to Exam Regulation 16.
 - e) Caused or Permitted someone else to be in the room whilst she sat the exam, contrary to Exam Regulation 20.
2. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), Ms Akanksha Kain failed to co-operate with the investigation of a complaint, in that she did not respond to any or all of ACCA's correspondence sent on:
- (a) 16 November 2022;
 - (b) 06 December 2022
 - (c) 27 January 2023; and
 - (d) 29 March 2023
3. By reason of her conduct described in 1 and 2 above, Ms Akanksha Kain is
- (a) Guilty of misconduct pursuant to bye-law 8(a)(i) or, in the alternative,
 - (b) Liable to disciplinary action pursuant to bye-law 8(a)(iii)

BACKGROUND

- 5. Ms Kain became an ACCA student on 25 March 2022.
- 6. On 14 May 2022, Ms Kain sat an ACCA remotely invigilated FBT- Business and Technology exam. She was found to be in possession of printed notes

during the exam and voluntarily opted to end the exam prior to the Intervention Specialist joining the session. Ms Kain later changed her mind and wanted to continue with the exam, but this was not permitted. On 16 May 2022, ACCA's CBE team contacted Ms Kain to inform her that a referral had been made to ACCA's Professional Conduct Department regarding the incident.

7. On 23 May 2022, Ms Kain contacted ACCA's Customer's Services Department stating she rescheduled her exam, due to 'technical glitches' and an 'unconditional pain' she faced on the day.

8. In a further email to ACCA's Customer Services Department on 26 May 2022, Ms Kain stated the following:

[Private]

9. On 8 July 2022, it was confirmed by ACCA's Qualifications Technical Advisor that written notes Ms Kain had in her possession during her FBT- Business and Technology exam on 14 May 2022 were not relevant to the exam.

10. A well-being call was also made by ACCA's Customer Services to Ms Kain on 19 August 2022. Ms Kain informed ACCA that she had been experiencing [Private] and significantly lacked information on sitting remote exams and exam preparation resources provided by ACCA. Ms Kain also claimed that instructions regarding the use of scrap paper in the exam were not clearly stated by ProctorU. It was accepted by ACCA that the written notes she had presented to the remote invigilator during her exam were not relevant to the FBT- Business and Technology exam and this was made known to Ms Kain on the call.

11. The Investigations Officer reviewed the exams footage video and a screen recording of the exam. The total run of the video was 2h29m34s, of which the first 1h01m50s relates to the set-up of the exam: ACCA contended that the following suspicious events were identified:

a) At approximately 32m32s, Ms Kain shows her scratch paper to the camera. One of the sheets contains printed notes.

- b) At approximately 33m23s, Ms Kain shows her two sheets of paper to the camera and the proctor questions the sheet of paper with printed notes. She then leaves her desk and returns with two sheets of blank paper.
- c) At approximately 35m18s, Ms Kain shows her room to the camera. The testing door is seen open. She later closes the door (seen closed at 42m45s).
- d) At approximately 1h42m00s, Ms Kain turns to her left-hand side and appears to be writing on something. Part of her face cannot be seen on camera when she turns to the left.
- e) At approximately 1h43m45s, Ms Kain's face returns to the screen, brief murmurs can be heard.
- f) At approximately 1h44m50s Ms Kain turns to her left-hand side again and appears to be writing. Her face returns to the screen at 1h45m35s.
- g) At approximately 1h47m00s to 1h 47:36, Ms Kain speaks, and another person can be heard replying back to her. She then says 'Are you able to hear me?' (twice), and then continues speak to the third party who can be heard replying.
- h) At approximately 1h49m58s, Ms Kain shows her room to the proctor. At 1:50:22, whilst showing her desk, more than two sheets of paper can be seen on the desk.
- i) At approximately 1h50m45s to 1h51m30s, Ms Kain shows her written scratch paper to the camera. One of the sheets contains printed notes.
- j) At approximately 1h52m40s, Ms Kain puts some scratch paper behind her.
- k) At approximately 1h57m28s, Ms Kain turns to her left-hand side.

- l) At approximately 2h11m52s, another person can be heard speaking and Ms Kain can be heard replying to them. The arm of the third party appears on screen at 2h12m19s
 - m) At approximately 2h14m53s, Ms Kain can be heard speaking to another person.
 - n) At approximately 2h18m00s to 2h19m05s, Ms Kain can be heard speaking and another person can be heard replying back to her. She can then be heard speaking on the phone. (Around this time she no longer has access to exam.)
 - o) At approximately 2h19m39s, another person can be seen in the background removing books from a table.
 - p) At approximately 2h22m45s, Ms Kain can be seen using her mobile phone, however, it is not clear for what purpose.
 - q) At approximately 2h26m44s, Ms Kain can be seen on her mobile. She later takes a photo of her screen at 2h27m42s. At this time, she can be seen speaking to another person.
12. The Investigations Officer wrote to Ms Kain's registered email address on 16 November 2022 and requested her comments and observations to this matter by 30 November 2022. The Investigations Officer also arranged for a copy of the video to be sent to Ms Kain. No response was received from her.
13. A first chaser email was sent on 6 December 2022, in which no response was received from Ms Kain.
14. A second chaser email was sent on 27 January 2022, in which no response was received from Ms Kain.
15. Translations of the written notes and the discussion between Ms Kain and the third party during the exam was provided by Ubiquis on 17 February 2023. The

languages written on the notes and spoken in the exam video are Urdu and Hindi.

16. A final chaser email was sent on 29 March 2023, informing Ms Kain that a failure to cooperate allegation will be raised against her.
17. On 29 March 2023, the Investigations Officer's sent an unencrypted email to Ms Kain requesting her responses to previous correspondence. No response was received from her.
18. On 29 March 2023, The Investigations Officer attempted to call Ms Kain on her registered her phone number. The call could not be connected.

ACCA's SUBMISSIONS

Allegation 1a) and 1(b) – Breach of Exam Regulation 1 and 2

19. ACCA submitted that Ms Kain failed to adhere to ACCA's Exam Regulations 1 and 2 and Exam Guidelines for remote invigilation/ on demand exams, in that she did not move her mobile phone out of arm's reach, having been given this instruction by the exam proctor before her exam began. She also was in possession of more than 2 sheets of paper during the exam. This is evidenced by the exam chat log, where she was instructed by the exam proctor to move her mobile phone out of arms reach behind her and the exams footage video where more than 2 pieces of paper are seen on her desk and she is seen and heard on her phone shortly after ending the exam, thus confirming the phone was in arms reach.

Allegation 1 (c) – Breach of Exam Regulation 4

20. It is ACCA's submission that Ms Kain failed to adhere to Exam Regulation 4, in that she was in possession of unauthorised materials in the form of notes during her FBT- Business and Technology Exam on 14 May 2022. However, ACCA conceded that the notes had no relevance to the exam. The notes were seen in the exam footage video when Ms Kain presented them to the exam

proctor on camera. In addition, this was noted and captured in the incident report form.

Allegation 1 (d) - Breach of Exam Regulation 16

21. ACCA contended that Ms Kain failed to adhere to exam regulation 16 as she can be seen and heard in the exam footage video speaking aloud, communicating, and having a discussion with another person on several occasions during the exam. Such was also noted and captured in the incident report form. It is also submitted that Ms Kain was aware that she was not allowed to speak in the exam as she was informed that she was not allowed to do so twice by the exam proctor. This is evidenced by the exam chat log at 07:12am and 07:13 am.

Allegation 1 (e)- Breach of Exam Regulation 20

22. It is ACCA's submission that Ms Kain failed to adhere to Exam Regulation 20 in that she failed to ensure no one else was allowed in her room whilst she sat her FBT – Business and Technology exam on 14 May 2022. This is supported by the exam video footage in which she can be heard having a discussion with another person in her room during the exam and this person's arm is eventually seen and captured on camera. It should also be noted that the exam proctor made reference to the third party in the incident report form.
23. Ms Kain also failed to adhere to ACCA's exam guidelines in that she did not ensure her room was quiet and that no third party was present in her room during the exam. This is evident in the exam footage where a third party can be heard and seen in her room during the exam.

Allegation 2 - Failure to Cooperate

24. ACCA submitted that Ms Kain's failure to reply to ACCA's correspondence which required responses is evidence of a failure to co-operate.
25. ACCA contended that by not engaging and cooperating with the investigation, ACCA were not completely able to understand the circumstances of the

incident and investigate the allegations fully. Her responses to the Investigation Officer's initial enquiries in particular would have helped clarify why she was using her phone during the exam and whether she received any assistance during the exam.

MS KAIN'S SUBMISSIONS

26. Although Ms Kain has not engaged with ACCA's Investigations Department, she mentions in her emails to ACCA Customer Services Team that she was not able to continue with her FBT- Business and Technology exam on 14 May 2022 as she was in pain and experiencing technical glitches.

DECISION ON ALLEGATIONS AND REASONS

27. The Committee accepted the advice of the Legal Adviser.
28. The Committee heard that there had been no previous findings against Ms Kain and accepted that it was relevant to put her good character into the balance in her favour.

DECISION ON FACTS

29. The Committee carefully considered all the documentary evidence it had received, as well as the submissions of Mr Jowett on behalf of ACCA and those written by Ms Kain. It reminded itself to exercise caution in relation to its reliance on documents. It noted the evidence of Ms Onyekwelu, who produced the video recording, but who it was agreed was not giving evidence as an expert and was primarily facilitating the production of the video.

Allegation 1

1. **Ms Akanksha Kain, an ACCA student in respect of her FBT-Business and Technology exam on 14 May 2022 (the exam)**
 - a) **Failed to adhere to ACCA's Exam Guidelines and the exam proctor's instructions by not moving her mobile phone out of**

arm's reach, contrary to Exam Regulation 1 and Exam Regulation 2.

30. The Committee noted that the timings of the video recording were of its duration and there was no correlation between those timings and the actual time when the exam was set. Whilst the Committee carefully attempted to make such a correlation, it found it very difficult to do this and concluded that ACCA had failed to demonstrate in relation to the video recording what happened at what specific time. This was material because the Committee was satisfied that the guidance instructing candidates to move their mobile phones out of arm's reach applied during the exam only. Having carefully viewed the video footage, the Committee noted the Ms Kain put her own phone behind her and out of reach during the exam. This was appropriate. Whilst a second phone was seen to be used by her, the Committee was not satisfied on the balance of probabilities that ACCA had proved that this was during the exam. ACCA had submitted that it was at "about the time the exam finished". The Committee was not persuaded that ACCA had proved on the balance of probabilities that Ms Kain was in possession of this phone at any time before the exam concluded and therefore has not proved that she had failed to put it out of reach during the exam. Accordingly, the Committee was not satisfied that allegation 1a) was proved.

b) Was in possession of more than 2 sheets of paper during the exam, contrary to Exam Regulation 1.

31. The Committee was satisfied that the video footage showed more than two sheets of paper on Ms Kain's desk during the exam. This is prohibited by the Exam Regulations and the Committee was satisfied that the presence of the paper constituted a breach of Exam Regulation 1. Accordingly, Allegation 1 b) was proved.

c) Was in possession of unauthorised materials in the form of notes during the exam, contrary to Exam Regulation 4.

32. Exam Regulation 4 prohibits (among other matters) the possession of notes during the exam and the Committee was satisfied that the reverse sides of Ms

Kain's scrap paper did have printed writing on them and were therefore "unauthorised materials". It was not persuaded that the handwritten notes shown on sheets during the exam were anything other than a proper use of the scrap paper. Therefore, in relation to the paper with printed material on it, the Committee was satisfied that Allegation 1c) was proved. The fact that the notes were accepted as not being relevant to the exam does not preclude this exam regulation being breached.

d) Was speaking aloud and communicating with another person during the exam, contrary to Exam Regulation 16.

33. The Committee noted that Exam Regulation 16 (and exam regulation 20 in relation to allegation 1e)) specifically refer to the requirements continuing until five minutes after the exam. It accepted that the video evidence showed that Ms Kain can be seen and heard in the exam footage video speaking aloud, and communicating, with another person in her own language. This conversation has been partially transcribed and the Committee accepted it appears to indicate that she did not want that person there as she informed him that there was an exam going on and seemed to request that he leave. Nonetheless, the Committee was satisfied that this communication constituted a technical breach of Exam Regulation 16 and accordingly Allegation 1 d) was proved.

e) Caused or Permitted someone else to be in the room whilst she sat the exam, contrary to Exam Regulation 20.

34. Exam Regulation 20 precludes anyone else being in the room with the candidate where the remote exam is taken. As stated above, the Committee was satisfied that in the exam video footage Ms Kain can be heard having a discussion with another person during the exam. However, from the information before it, given the partial transcription of the conversation, the Committee was not persuaded the ACCA had proved that Ms Kain had "caused or permitted" someone else to be in the room as she appeared to have objected to the person entering the room and appeared to have requested them to leave. Accordingly, the Committee was not satisfied that Allegation 1 e) was proved.

- 2. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), Ms Akanksha Kain failed to co-operate with the investigation of a complaint, in that she did not respond to any or all of ACCA's correspondence sent on:**
- (a) 16 November 2022;**
 - (b) 06 December 2022**
 - (c) 27 January 2023; and**
 - (d) 29 March 2023**
35. In relation to Allegation 2, the Committee was satisfied that under paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, there was an obligation on Ms Kain to co-operate fully with ACCA in the investigation of any complaint. It was satisfied that Ms Kain made no response to ACCA's correspondence requesting her co-operation on the 16 November 2022, 6 December 2022, 27 January 2023 and 29 March 2023. There was no evidence before the Committee in this case to amount to a defence to the obligation on professionals to co-operate with their regulator as expressed in Regulation 3(1). It was therefore satisfied that these non-responses amounted to failures as Ms Kain had a duty to respond. Therefore, she breached the obligation under the Regulations and Allegation 2 was proved.
- 3. By reason of her conduct described in 1 and 2 above, Ms Akanksha Kain is**
- (a) Guilty of misconduct pursuant to bye-law 8(a)(i) or, in the alternative,**
 - (b) Liable to disciplinary action pursuant to bye-law 8(a)(iii)**
36. The Committee next asked itself whether the proven breaches of the Exam Regulations, amounted to misconduct.
37. The Committee had regard to the definition of misconduct in Bye-law 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Ms Kain's breaches of the Exam Regulations were technical breaches.

She appeared to have been trying to comply with the Exam Regulations and noted that in relation to Allegation 1 d) she did try to tell the third party to leave. It was not persuaded that her Exam Regulation breaches, reached the threshold for misconduct. The Committee accepted that the notes Ms Kain had on her desk were not relevant to the exam and that it was not ACCA's case that Ms Kain had been cheating or attempting to cheat. In these circumstances, the Committee was not persuaded that the breaches of the exam regulations it had found reached the threshold of misconduct. The Committee as required by the byelaws, found that the breaches rendered Miss Kain liable to disciplinary action.

38. The Committee was satisfied that failing to co-operate with your regulator was serious and amounted to misconduct. It was an essential obligation of every professional to cooperate with its regulator to enable the regulator to properly investigate allegations brought before it and so that public confidence in the regulatory system can be maintained. In the light of its judgment on Allegation 3(a) no finding was needed upon Allegation 3(b).

SANCTIONS AND REASONS

39. The Committee noted its powers on sanction were those set out in Regulation 12(3). It had regard to ACCA's Guidance for Disciplinary Sanctions and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate. It considered the available sanctions in ascending order and applied the principle of proportionality. It accepted the advice of the Legal Adviser.
40. The Committee considered that the proven conduct in the exam in was not serious, unlike the non-cooperation failures. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. Failing to co-operate with your professional regulator is a breach of a fundamental obligation on any professional.

41. The Committee considered that Ms Kain's previous good character was a mitigating factor and that she was under stress and unwell during the exam. In relation to aggravating factors, the Committee considered that there was no evidence of insight or understanding into the seriousness of the behaviour.
42. Given the Committee's view of the seriousness of her conduct in relation to the non-cooperation, it was satisfied that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to highlight to the profession and the public the gravity of the proven misconduct.
43. The Committee determined that her misconduct in relation to the non-cooperation was fundamentally incompatible with Ms Kain remaining on the student register of ACCA as it was a fundamental obligation on any professional to engage with their regulator. The failure was prolonged and repeated. It considered that the only appropriate and proportionate sanction was that she be removed from the student register.

COSTS AND REASONS

44. ACCA claimed costs of £5,687.50. and provided a detailed schedule of costs. It noted Ms Kain has not provided a formal statement of means but was satisfied that there was credible evidence from her that she was of limited means, whose ACCA fees had been funded by her father. It had regard to ACCA's Guidance for Costs Orders. The Committee decided that it was appropriate to award costs in this case and the costs claimed were reasonable incurred. However, given its conclusion that she has very limited means, the Committee concluded that the sum of £500 was appropriate and proportionate. Accordingly, it ordered that Ms Kain pay ACCA's costs in the amount of £500.

EFFECTIVE DATE OF ORDER

45. This order shall take effect from the date of the expiry of the appeal period unless notice of appeal is given prior to the expiry of that period, in which case

it shall become effective (if at all) as described in the Appeal Regulations. The Committee was not persuaded that the ground for imposing an immediate order was made out given the facts of this case and that public protection is not involved.

Mr Martin Winter
Chair
7 March 2024