

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Miss Khushnam Jatinder Kumar
Heard on:	Friday, 8th March 2024
Location:	Held remotely by videoconference
Committee:	Ms Wendy Yeadon (Chair), Ms Andrea White (Accountant) and Ms Jackie Alexander (Lay)
Legal Adviser:	Mr Andrew Granville Stafford
Persons present and capacity:	Miss Khushnam Jatinder Kumar (Member) Mr Ryan Ross (ACCA Case Presenter) Ms Anna Packowska (Hearings Officer)
Summary:	Allegations 1(a), 1(b), 2(a), 2(b) and 3(a) found proved Removed from the student register with immediate effect
Costs:	£3,500 awarded to ACCA

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INTRODUCTION

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Miss Khushnam Jatinder Kumar. Miss Kumar is a student member of ACCA, having been admitted to student membership on 18 June 2015.
2. The Committee had before it a bundle of documents (93 pages), an additional bundle (21 pages) and a service bundle (16 pages).

ALLEGATIONS

3. The allegations against Miss Kumar were as follows:

Allegation 1

On 05 September 2022, Miss Khushnam Jatinder Kumar, an ACCA student:

- a) Used, or caused or permitted a third party to use, an unauthorised item, during ACCA's Advanced Audit and Assurance remotely invigilated exam, to take photographs of one or more of the exam questions, contrary to Exam Regulations 5a, and/or 10.
- b) Shared, or caused, or permitted one or more of the photographs referred to in Allegation 1a, to be shared with a person or persons unknown, contrary to Exam Regulations 10 and/or 12.

Allegation 2

Miss Kumar's conduct:

- a) In respect of allegation 1a, was dishonest in that the taking and retaining of the photograph of the exam question could potentially assist her if she had to resit the same exam and thereby provide her with an unfair advantage and/or
- b) In respect of allegation 1b, was dishonest in that sharing the photograph with

another or other exam candidates sitting the same exam could provide them with an unfair advantage, or in the alternative,

- c) Demonstrates a lack of integrity; or in the further alternative,
- d) Was reckless in that she failed to pay any or any due regard to the fact that taking or allowing a photograph of ACCA exam content to be taken and/or sharing or allowing the photograph to be shared could provide her or another exam entrant with an unfair advantage.

Allegation 3

By reason of any or all of the facts set out at Allegations 1 and /or 2 above, Miss Kumar, is

- a) Guilty of misconduct pursuant to bye-law 8(a)(i); or in the alternative,
- b) Liable to disciplinary action pursuant to byelaw 8(a)(iii),) in respect of allegation 1.

- 4. Miss Kumar disputed the allegations.

PRELIMINARY APPLICATION

- 5. Mr Ross made an application on behalf of ACCA to admit as hearsay evidence two documents. The first was an email from an anonymous whistleblower, alerting ACCA to the fact that an ACCA exam question had been posted on the internet. The second was an email from an ACCA employee confirming that what had been posted was a question from an exam that Miss Kumar sat on 5 September 2022. Mr Ross submitted that it would be consistent with the requirements of justice and fairness to receive this evidence in this form.
- 6. Miss Kumar made no submission on the application.
- 7. The Committee took advice from the Legal Adviser who referred it to Regulation 12(2)(a) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ('CDR') and the principles for admission of hearsay evidence in disciplinary proceedings.

8. The Committee acceded to the application. It considered that neither email contained evidence that was controversial. The Committee noted that Miss Kumar had not disputed that the photograph in question had been posted on the internet, nor that it was a question which was from the exam she had sat. In those circumstances, it was not in the Committee's view unfair to admit these documents into evidence.

BACKGROUND AND EVIDENCE

9. On 5 September 2022, Miss Kumar sat ACCA's Advanced Audit and Assurance ('AAA') exam. This was a computer-based exam, which the student takes at their own premises using their own computer. It is remotely invigilated. The invigilator has access to the webcam and microphone, which are used to monitor and communicate with the candidate, and a recording is taken.
10. Prior to examinations, all candidates receive an attendance docket which contains ACCA's Examination Regulations and Examination Guidelines. These include the following regulations.

5(a) You are not permitted to use a dictionary or an electronic device or translator of any kind or have on or at your desk a calculator which can store or display text. You are also not permitted to use in your examination room an electronic communication device, camera, smart watch, any other item with smart technology functionality or mobile phones (unless the exam is being conducted remotely in which case it must only be used in accordance with ACCA's Exam Guidelines). These are regarded as 'unauthorised items' and are taken into the examination room at the candidate's own risk.

10. You may not engage in any conduct designed to assist you in your exam attempt or provide any improper assistance to any other exam entrant in their exam attempt.

12. If you are taking a computer-based exam you are not permitted to copy exam content in any manner or take photograph(s) or videos of your screen or permit any other person to do the same'.

14. *Exam content (questions, scenarios, format) are owned by ACCA. You are prohibited from copying, photographing, videoing, or reproducing in any manner exam content (questions, scenarios and/or format). You are strictly prohibited from 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.*
11. On 29 October 2022 ACCA received an anonymous tip-off that a question from the AAA exam had been shared on Facebook. The post included a photograph of a laptop screen showing the exam question and a header which showed the title of the exam and the first seven letters of the candidate's name (Khushna ...). Six numbers from the candidate's access code [REDACTED] were also visible, despite an attempt which had been made to obscure personal details by colouring over them.
12. From this information, ACCA identified the photograph as being from Miss Kumar's AAA exam attempt on 5 September 2022. The six letters matched the first seven letters of her forename (Khushnam), and the six numbers matched the last six numbers of her unique student access code [REDACTED].
13. ACCA relied on the evidence of Mr A, an ACCA exam technician. He provided a witness statement and gave oral evidence to the Committee. He said that having conducted a search on ACCA's Customer Engagement database, the only potential match for the above is Miss Kumar. There was no other student with 'Khushna' as part of their name. Having established that, and that Miss Kumar took the AAA exam in the September sitting, it was then established that the six numbers of the student access code which were visible in the photograph matched the last six numbers of the code assigned to Miss Kumar by the exam provider.
14. A search undertaken by ACCA revealed that this photograph had been posted on a public account entitled 'ACCA' on 5 September 2022, the same day Miss Kumar sat the AAA exam, along with the following text:

'ACCA (Association of Chartered Certified Accountants)

Pay After Exam

200% Passing Guarantee

Available in September and October windows

Enroll It Fast'

15. Mr A told the Committee in his oral evidence that the Facebook profiles on which the photograph was posted appeared to be fake. He had not been able to find any link between those profiles and Miss Kumar.
16. ACCA also relied on the following. The photograph of the question showed that the laptop used by the candidate was an 'Acer' model with a black bevel, or border, around the edges of the screen. ACCA had photographs, provided by Miss Kumar to the invigilator of her workspace on the day of the exam. They showed that she had used an 'Acer' laptop with a black bevel around the screen.
17. Miss Kumar was notified of the investigation by email on 24 March 2023. The allegations were put to her, and she was asked whether she admitted or denied them. Miss Kumar submitted her response on 27 March 2023. She denied that she had taken the photograph or that she had shared any photograph of an exam question with anyone. She stated:

'I have no recollection of any photograph being taken during my examination. Throughout the entire session, I was closely monitored by invigilators, and I am unaware of any such activity taking place. My primary focus was on completing the exam with complete honesty and integrity.'

I find it hard to believe that I could have taken photograph of any ACCA confidential content while attempting an exam under invigilator surveillance. Every aspect of my examination was being closely monitored, and my every movement was being recorded.'

18. Miss Kumar stated that there was no one else in the room for the duration of the exam. She said:

'the evidence presented against me only contains the starting letters of the name and a certain code that could correspond to any individual with a similar name or code. Furthermore, there is a possibility that these photographs have been edited or manipulated by third parties for their own commercial gain, thereby making it impossible to attribute any wrongdoing to me.'

19. Miss Kumar stated she had nothing to do with the Facebook profiles containing the photograph and had never seen the content in question before. She said she had no unauthorised device with her during the exam. She added:

'Why would I want to advertise pictures on social media when I know I can be spoiling my entire future by doing harm to my name and my relationship with ACCA.'

As you can notice there is no content of the exam being displayed in the evidence shared. Why would I ruin my hard work for all the paper just to post a photo that brings me no benefit.'

20. Miss Kumar confirmed that she read ACCA's exam regulations prior to the examination and that 'being a student since 2015 and an active associate of ACCA, I recognize that academic integrity is a critical aspect of my professional qualification, and I remain committed to upholding the highest standards of honesty and ethical conduct throughout the years'.
21. ACCA submitted that the partial name and access code, the exam question and physical appearance of the laptop, coupled with the date on which the post appeared on Facebook, meant that it must have been a photograph taken either by Miss Kumar or with her knowledge and consent.
22. Miss Kumar gave oral evidence to the Committee. She told the Committee that if the invigilator had noticed anything suspicious they would ask questions and they can also terminate the exam. However, the invigilator for this exam did neither of those because they had no grounds for suspicion.
23. Miss Kumar had used her mobile phone prior to the exam to take a photograph of the access code. This was so, in the event that the exam app crashed, she could get back into the exam. She told the Committee that she had shown the

invigilator, using the webcam on her laptop, where she had placed her phone during the exam. This was on a table to her left, out of reachable distance. She confirmed that she had used the toilet during the exam but, after returning to her desk from the toilet, she had again shown the invigilator that her phone was out of reach.

24. Miss Kumar said the location in which she sat the exam was a hotel room. This was because it would have been too noisy to try to sit the exam at home. The hotel room was actually booked by a tutor on the course she was taking to prepare for the exam. She had made a cash payment to the receptionist at the hotel though she accepted that did not represent the full price of the room booking. She had tried to contact the tutor subsequent to this investigation commencing but had been unable to do so.
25. Miss Kumar told the Committee that this was the last exam she had to take to gain her ACCA qualification, which she had worked very hard for. It would make no sense, she said, to sabotage her ACCA qualification by acting in the manner alleged against her. She had not benefitted in any way. She maintained that there was no one else in the room with her during the exam and that she had not taken the photograph which appeared on the internet, although she did not dispute that the photograph is of her laptop and her exam question. She said she was unable to explain how the picture came to be on the internet.

DECISIONS ON ALLEGATIONS AND REASONS

26. The Committee considered the documents before it, the submissions of Mr Ross on behalf of ACCA, Miss Kumar's oral evidence and submissions and the advice of the Legal Adviser. The Committee bore in mind that the burden of proving an allegation rests on ACCA and the standard to be applied is proof on the balance of probabilities.

Allegation 1(a)

27. The Committee was satisfied that, for the reasons submitted by ACCA, that the photograph shared on Facebook must have been taken of Miss Kumar's laptop during the ACCA exam. Indeed, Miss Kumar appeared to accept that during her evidence or, at very least, did not assert positively otherwise.

28. The Committee noted the angle at which the photograph was taken. The camera was clearly not square on to the screen but must have been out-of-sight of the screen. That was, in the Committee's view, consistent with an attempt to avoid observation by the invigilator through the webcam. The time on the screen showed that the photograph was taken part-way through the exam. The Committee was satisfied that this photograph could not have been taken without Miss Kumar's knowledge. Miss Kumar's claim that she did not know how a photograph of her laptop could have been taken during the exam was not, in the Committee's view, credible.
29. On the balance of probabilities, the Committee considered it more likely than not that Miss Kumar took this photograph. It was less likely that someone else took the photograph, because it would have been difficult for them to do so without being observed by the invigilator. The device used to take the photograph was clearly an unauthorised item, within the meaning ascribed to that term by Regulation 5(a) of the Exam Regulations.
30. Therefore, the Committee was satisfied that ACCA had proved that Miss Kumar herself used, or caused or permitted someone else to use, an unauthorised item to take a photograph during the exam in question.
31. This was clearly a breach of Exam Regulation 5(a), which prohibits the use of unauthorised items during an exam, and that includes communication devices and cameras. The Committee was also satisfied that it constituted a breach of Exam Regulation 10, which prohibits conduct designed to assist a candidate in their own exam attempt or provide any improper assistance to any other exam entrant. The Committee considered that there was no logical reason for taking a photograph of an exam question other than to achieve one or other of those objectives.
32. It inevitably followed that Exam Regulation 12, which prohibits the copying or photographing of any exam content, had also been breached.
33. Therefore, the Committee found Allegation 1(a) was proved in its entirety.

Allegation 1(b)

34. Having found in relation to Allegation 1(a) that Miss Kumar had taken a photograph, or at very least allowed someone else to take a photograph, of one of her exam questions, the issue in relation to Allegation 1(b) was whether Miss Kumar had shared that photograph or had caused or permitted someone else to do so.
35. The photograph had ended up on the internet and that could have only happened if Miss Kumar had shared the photograph, or she had caused or permitted it to be shared. It was not, in those circumstances, necessary for the Committee to determine the mechanism by which it had been shared. It was sufficient for the Committee to find Ms Kumar had actively participated in the sharing of this photograph.
36. This was, in the Committee's view, a breach of Exam Regulation 10 for the same reasons as given in paragraph 31 above, namely that the only logical reason for sharing a photograph of an exam question was to gain an advantage in respect of your own exam attempt or to improperly help someone else. It was also a breach of Exam Regulation 14, which prohibits taking a photograph of exam content during an exam.
37. Therefore, the Committee found Allegation 1(b) proved in its entirety.

Allegations 2(a) and 2(b)

38. Allegations 2(a) and 2(b) alleged that the conduct in Allegations 1(a) and 1(b), respectively, was dishonest.
39. Miss Kumar clearly knew, as she accepted in her oral evidence, that taking photographs of exam questions was prohibited by the Exam Regulations. Further, she accepted that such conduct would be dishonest.
40. The Committee was satisfied that both taking the photograph and sharing it or causing or permitting it to be taken and shared, would be regarded as dishonest by the standards of ordinary and honest people.
41. The Committee therefore found Allegations 2(a) and 2(b) proved.

Allegations 2(c) and 2(d)

42. As Allegations 2(c) and 2(d) were in the alternative, there was no need for the Committee to make a finding in relation to them.

Allegation 3(a)

43. The Committee was satisfied that dishonest conduct in relation to professional exams not only falls far short of accepted standards but would be regarded as deplorable by fellow accountants. It brings discredit on Miss Kumar, the Association and the profession.
44. Therefore, the Committee found that this behaviour amounted to misconduct and that, accordingly, Allegation 3(a) was proved.

Allegation 3(b)

45. As Allegation 3(b) was in the alternative, there was no need for the Committee to make a finding in respect of it.

SANCTION AND REASONS

46. The Committee considered what sanction, if any, to impose taking into account ACCA's Guidance for Disciplinary Sanctions ('GDS') and the principle of proportionality. The Committee bore in mind that the purpose of sanctions was not punitive but to protect the public, maintain confidence in the profession and declare and uphold proper standards of conduct and behaviour. Having found that Miss Kumar's actions amounted to misconduct, taking no further action was clearly not appropriate. The Committee therefore considered the available sanctions in ascending order of seriousness.
47. In mitigation, the Committee took into account that no previous findings had been made against Miss Kumar, and that this was an isolated incident.
48. The Committee considered that the following were aggravating features. Miss Kumar had shown a lack of insight and remorse, as demonstrated by the fact she had throughout contested the allegation. Further, there is clearly potential

for harm and for confidence in the exam system to be diminished when student members act in a way that abuses that system.

49. In light of the fact that Miss Kumar's conduct was a very serious departure from accepted standards and involved dishonesty, the Committee was satisfied that it would be inappropriate to admonish or reprimand Miss Kumar. The misconduct was not at the lower end of the spectrum.
50. The Committee considered whether a severe reprimand would be an appropriate sanction. Taking into account the guidance in the GDS, the Committee decided this would not adequately mark the seriousness of the misconduct. The conduct in this case was deliberate and Miss Kumar has shown no evidence of insight or regret. Further, the Committee did not consider that a severe reprimand would adequately protect the public or promote the public interest.
51. The Committee concluded that Miss Kumar's actions in this case were fundamentally incompatible with being a student member of a professional association. They constituted a very serious departure from relevant standards. Any dishonesty undermines trust and confidence in the profession.
52. The Committee did not feel that, in the circumstances, any order which allowed Miss Kumar to retain her student membership of ACCA could be justified.
53. Therefore, the Committee made an order under CDR 13(4)(c) of the Disciplinary Regulations removing Miss Kumar from the student register.
54. The Committee did not consider that the public interest in this case required it to additionally make an order under CDR 13(4)(c) restricting Miss Kumar's right to apply for readmission beyond the normal minimum period.

COSTS AND REASONS

55. ACCA applied for costs against Miss Kumar in the sum of £7,769. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing.

56. The Committee found that there was no reason in principle not to make an order for costs in ACCA's favour. Nor did it consider that the application was for an unreasonable amount.
57. Miss Kumar provided information about her financial circumstances, which the Committee accepted. Given her available means, the Committee considered that it was appropriate to reduce the costs accordingly and awarded the sum of £3,500.

EFFECTIVE DATE OF ORDER

58. The Committee determined that it would be in the interests of the public for the order to take immediate effect. Therefore, pursuant to Regulation 20 of the Disciplinary Regulation, the order removing Miss Kumar from student membership will take effect immediately.
59. Pursuant to CDR 12(5)(b), the interim order that has been imposed on Miss Kumar's membership is rescinded.

Wendy Yeadon
Chair
08 March 2024