

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Ms Muskaan Jain
Heard on:	Thursday, 10 October 2024
Location:	Remotely via Microsoft Teams
Committee:	Ms Kathryn Douglas (Chair) Mr Abdul Samad (Accountant) Ms Sue Heads (Lay)
Legal Adviser:	Ms Giovanna Palmiero
Persons present and capacity:	Mr James Halliday (Case Presenter on behalf of ACCA) Ms Nicole Boateng (Hearings Officer)
Summary	Removed from the student register
Costs:	Ms Jain ordered to pay £5,000.00 towards ACCA's Costs

INTRODUCTIONS

1. The Disciplinary Committee (“the Committee”) convened to hear allegations of misconduct against Ms Muskaan Jain (Ms Jain).
2. Mr James Halliday (Mr Halliday) presented the case on behalf of the ACCA.
3. Ms Jain did not attend and was not represented.

4. The Committee had confirmed that it was not aware of any conflicts of interest in relation to the case.
5. In accordance with Regulation 11(1)(a) of the Chartered Certificate Accountants Complaints and Disciplinary Regulations 2014 (the Regulations), the hearing was conducted in public.
6. The hearing was conducted remotely via Microsoft Teams.
7. The Committee was provided with, and considered in advance, the following documents:
 - i. A Report & Hearing Bundle with pages numbered 1-74;
 - ii. A Memorandum & Agenda with pages numbered 1-2;
 - iii. A Service Bundle numbered with pages numbered 1-22.
 - iv. Cost Schedules were provided to the Committee at the sanction stage.

PRELIMINARY APPLICATIONS

SERVICE OF PAPERS

8. The Committee was informed that Ms Jain had been served with a notice of today's hearing, together with the necessary papers via electronic mail on 10 September 2024.
9. The Committee was satisfied that notice had been sent to Ms Jain's registered email address in accordance with regulation 22 of the Complaints and Disciplinary Regulations 2014 as amended ("CDR"). The Committee noted that the email had been delivered successfully. CDR 22(8) stipulates that, when a notice has been sent by email, it is deemed to have been served on the day it was sent. Accordingly, the Committee was satisfied that Ms Jain has been given 28 days' notice with the necessary information required in accordance with CDR 10.

10. The Committee decided that Ms Jain had been properly served with Notice of Proceedings.

PROCEEDING IN ABSENCE

11. The Committee noted that the ACCA Hearings Officer had attempted to contact Ms Jain by telephone on 1 October 2024 to confirm her attendance at the hearing. Ms Jain did not answer the call. An email was sent to confirm the attempted contact.
12. On 8 October 2024 the Hearings Officer attempted to call Ms Jain, again on the telephone number registered with the ACCA. The call was not answered due to being busy. This was followed up by an email confirming attempted contact. The Committee noted that Ms Jain responded to this contact on 8 October by email stating, *"Im no longer pursuing acca so i wont be attending this event"* (sic).
13. The Committee considered that ACCA had taken reasonable steps to encourage Ms Jain to attend the hearing. The Committee was satisfied that the emails had been sent to the email address on the ACCA's register and that there was a record of the emails having been delivered successfully. The Committee noted that Ms Jain had been given sufficient notice of the hearing and notified that if she did not attend then the Committee could proceed in her absence. The Committee concluded, on the balance of probabilities, that Ms Jain was aware of today's hearing and had voluntarily absented herself. She had disengaged with the process, and her recent correspondence confirms this.
14. The Committee was also satisfied that taking the seriousness of the allegations into account, it was in the public interest to proceed. The Committee did not consider that any benefit would be derived in adjourning the hearing and no such application had been made.

ALLEGATIONS

15. Ms Muskaan Jain (Ms Jain), a student of Association of Chartered Certified Accountants ('ACCA'):
 1. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), Ms Jain failed to co-operate with an investigation of a complaint, in that she did not respond to any or all of ACCA's correspondence dated:
 - (a) 4 September 2021;
 - (b) 27 September 2021;
 - (c) 13 October 2021.
 2. By reason of her failure to co-operate in respect of the matter set out above, Ms Jain 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).

BRIEF BACKGROUND

16. On 14 January 2021, ACCA registered Ms Jain as a student. As such, she is bound by ACCA's Bye-laws and Regulations.
17. ACCA's Investigations Department opened a complaint on 29 July 2021, based on video evidence and documents received from ACCA's CBE Delivery Department in respect of Ms Jain's conduct in connection with her remotely invigilated FBT Business and Technology examination (the 'Exam') which took place on the 21 July 2021. The proctor (remote exam invigilator) filed an Incident Report in respect of conduct observed (failure to comply with the proctor's instruction to refrain from looking off-screen) during the Exam.

18. On 27 July 2021, ACCA's CBE Delivery team emailed Ms Jain informing her that her conduct would be referred to the Professional Conduct Department. On 30 July 2021, ACCA sent an email to Ms Jain's registered email address informing her of the referral to the Investigations Department.
19. On 4 September 2021, ACCA sent a letter to Ms Jain's registered email address informing her of the details of the complaint and seeking her response by 25 September 2021. No response has been received.
20. On 27 September 2021, ACCA sent another letter to Ms Jain's registered email address reminding her of her obligation to co-operate with the investigation and seeking her response by 11 October 2021. No substantive response has been received.
21. On 13 October 2021, ACCA sent another letter to Ms Jain's registered email address reminding her of her obligation to co-operate with the investigation and seeking her response by 20 October 2021. No substantive response has been received.
22. On 15 October 2021, Ms Jain responded to the letter sent by ACCA on 27 September 2021 with "*Ok thank you*". She did not provide any response to the questions in the letter.
23. On 20 October 2021, ACCA sent an email to Ms Jain's registered email address to draw her attention to the letters.
24. On 21 October, ACCA attempted to call Ms Jain's registered mobile number to draw her attention to the letters. Ms Jain did not answer.
25. The email address that was used by ACCA to communicate with Ms Jain has remained the same throughout the investigation. Ms Jain has not provided any substantive response to the correspondence sent to her during the course of ACCA's investigation. All emails were sent to Ms Jain at an email address she registered with ACCA. The email address has not changed throughout the course of the investigation. None of the emails have been returned or bounced back into the case management system.

ACCA's SUBMSIONS

26. ACCA submits that the allegations referred to above are capable of proof by reference to the evidence in the bundle.
27. ACCA submits that if the facts set out at the Allegations are found proved, Ms Jain has acted in a manner which brings discredit to her, ACCA and/or to the accountancy profession and her conduct amounts to misconduct pursuant to Bye-law 8(a)(i).
28. ACCA submits that if it is accepted that Complaints and Disciplinary Regulation 3(1) has been breached by virtue of the facts and submissions stated above, then Bye-law 8(a)(iii) is automatically engaged in respect of the Allegations.

MISCONDUCT

29. Bye-laws 8(a)(i), 8(c), 8(d) refer to (and partially define) misconduct. In order for Ms Jain's conduct to amount to a breach of Bye-law 8(a)(i) it must amount to misconduct.
30. Bye-law 8(c) states that *"for the purpose of bye-law 8(a), misconduct includes (but is not confined to) any act or omission which brings, or is likely to bring, discredit to the individual or relevant firm or to the Association or to the accountancy profession."*
31. Bye-law 8(d) provides that when assessing the conduct in question, regard may be had to the following:
 - (a) Whether an act or omission, which of itself may not amount to misconduct, has taken place on more than one occasion, such that together the acts or omissions may amount to misconduct;
 - (b) Whether the acts or omissions have amounted to or involved dishonesty on the part of the individual or relevant firm in question; and

- (c) The nature, extent or degree of a breach of any code of practice, ethical or technical, adopted by the Council, and to any regulation affecting members, relevant firms or registered students laid down or approved by Council.
32. In the case of *Roylance v General Medical Council* [2001] 1 AC 311 in relation to the meaning of misconduct it was said, *'the meaning of this term is of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety in any given case may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances.'*
33. ACCA submits that in failing to respond to the requests of ACCA, Ms Jain has breached Complaints & Disciplinary Regulation 3(1). Ms Jain was under a duty to cooperate, and therefore respond, to ACCA's investigation correspondence, in which she was asked for a response to allegations raised against her.
34. Failure to co-operate fully with one's professional body is a serious matter, demonstrating a lack of professional responsibility and a disregard for ACCA's regulatory process. A failure to adequately respond to questions asked by ACCA during an investigation into one's conduct prevented ACCA from fully investigating and, if necessary, taking action upon, what might be serious matter.
35. Every ACCA student has an obligation to co-operate fully with their professional body, and to engage with it when any complaints are raised against the individual. Such co-operation is fundamental to a regulator being able to discharge its obligations of ensuring protection of the public and upholding the reputation of the profession.
36. Failure to co-operate fully with ACCA is serious, undermining its opportunity to regulate the profession properly.

37. Failure to co-operate, if allowed to go unchecked would undermine public confidence in the profession, and ACCA needs to take action in the public interest to uphold proper standards of conduct and behaviour.
38. The inclusion in the evidence bundle of the material in connection with the proctor's Incident Report is considered relevant by ACCA, to the extent that it shows the nature of the complaint and how important it was for Ms Jain to have co-operated and, in particular, to have answered questions about failing to comply with the proctor's instruction to refrain from looking off-screen.
39. If the conduct set out in the Allegation is found proved, and the Committee is not persuaded it amounts to misconduct, then it is asked to consider whether the same conduct amounts to liability to disciplinary action pursuant to Bye-law 8(a)(iii).
40. The Committee will note that:

“Contrary to Complaints & Disciplinary Regulation 3(1), Ms Jain has failed to respond to ACCA’s investigation correspondence.”

DECISION ON FACTS AND REASONS

41. The Committee took into account ACCA's written representations which were supplemented by Mr Halliday orally. The Committee considered legal advice from the Legal Adviser, which it accepted.
42. 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.
43. The Committee noted that there has been a delay of three years in bringing these proceedings against Ms Jain, however she had recently communicated with ACCA regarding this hearing.
44. The Committee firstly considered Allegations 1(a), (b) and (c). Allegation 1 referred to the fact that Ms Jain had not responded to three emails requesting information regarding her behaviour during her exam on the 21 July 2021. The

emails requesting information from Ms Jain were dated 4 September 2021, 27 September 2021 and 13 October. The Committee noted that on the 15 October 2021, Ms Jain did indeed respond to the earlier emails, and she stated, “*Ok thank you*”. She did not provide any response to the questions in the letter. The Committee noted that whilst this was a response by Ms Jain, it was not a substantive response, or in any way showed engagement or cooperation with the investigation process.

45. The Committee was not provided with any evidence showing the emails had bounced back, or not been successfully delivered.
46. The Committee noted that Ms Jain had responded to ACCA correspondence on the 8 October 2024, using the email address that the original emails were sent to.
47. The Committee concluded that Ms Jain, as a student member, had a positive duty to cooperate with ACCA’s investigation and on the balance of probabilities was convinced that she had not cooperated or discharged her duty. The Committee determined Ms Jain’s failure to co-operate was deliberate, as she acknowledged the existence of the investigation in her email dated 15 October 2021, which involved serious allegations of cheating during an exam.
48. It is for the above reasons that the Committee concluded that Allegations 1(a), (b) and (c) on the balance of probabilities, were found proved.
49. In relation to Allegation 2(a), the Committee applied the test for misconduct, as per the case of *Roylance v General Medical Council* [2001] 1 AC 311, in which it was decided that ‘*the meaning of [misconduct] is of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety in any given case may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances.*’.
50. The Committee found that Ms Jain’s actions were serious and fundamentally fell short of the standards required of a professional person. If the regulator cannot conduct effective investigations into potential allegations of dishonesty

or integrity of its members, then they cannot uphold the proper exam standards, which directly impacts upon the reputation of the regulator as a whole.

51. In the Committee's judgement, this amounted to very serious professional misconduct. The Committee determined that failing to co-operate with the regulator's investigation would be considered deplorable conduct by fellow professionals. Such behaviour seriously undermines the integrity of the regulatory framework and the standing of ACCA. It brings discredit upon the profession and ACCA. The Committee considered Ms Jain's behaviour to be very serious and the Committee was in no doubt that it amounted to misconduct.
52. The Committee therefore found that the matters set out in Allegations 1(a), 1(b), 1(c) amounted to misconduct. In respect of Allegation 2(a) the Committee found that Ms Jain was liable to disciplinary action through her misconduct. Having found Allegation 2(a) proved it was not necessary for the Committee to consider Allegation 2(b), which was alleged in the alternative.

SANCTIONS AND REASONS

53. In reaching its decision on sanction, the Committee considered the oral submissions made by Mr Halliday on behalf of ACCA. Mr Halliday confirmed that there was no disciplinary record for Ms Jain prior to the hearing.
54. Mr Halliday made no submission as to the actual sanction but referred to the Guidance for Disciplinary Sanctions (GDS) and in particular the summary of the general principles. He commented on potential mitigating and aggravating features of the case, referring to the fact that Ms Jain had no other known previous disciplinary findings. Mr Halliday stated that Ms Jain's conduct was persistent in failing to respond, and her actions amounted to potential for harm to the integrity of the regulatory framework, but conceded that there has been no actual harm. He went on to state that the sanction of No Further Action and Admonishment were inappropriate due to lack of admissions and the fact that this was a deliberate act, with no expressions of remorse or apology.

55. Mr Halliday stated that a Reprimand or Severe Reprimand, was reserved for conduct where there was no deliberate disregard of professional regulations.
56. In relation to the effective date of the order, Mr Halliday stated that this was only relevant if the Committee decides that Ms Jain should be removed from the student register, and if it is in the interest of the public. The Committee can direct that such an order have an immediate effect, however, this was a decision for the Committee on its own assessment.
57. The Committee accepted the advice of the Legal Adviser who referred it to ACCA's GDS. In considering what sanction, if any, to impose, the Committee bore in mind the principle of proportionality and the need to balance the public interest against Ms Jain's own interests.
56. The Committee referred to the Guidance for Disciplinary Sanctions issued by ACCA and had in mind the fact that the purpose of sanctions was not to punish Ms Jain but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct, and that any sanction must be proportionate.
58. When considering the appropriate sanction, the Committee considered the aggravating and mitigating features of the case.
59. The Committee considered the misconduct involved the following aggravating features:
- Extended period of time the misconduct took place, on three different occasions;
 - Potential for harm to the integrity to the regulatory framework.
60. The Committee considered the misconduct involved the following mitigating features:
- The absence of any previous disciplinary history with ACCA, which is of limited application due to her recent admission to student membership.
 - No actual harm.

61. The Committee had reference to the GDS and determined that failing to cooperate with an investigation is very serious, and there were no mitigating facts which would lower the starting point of seriousness.
62. In respect of No Further Action, Admonishment and Reprimand the Committee considered that Ms Jain's actions are too serious to consider these as appropriate sanctions as they would not adequately mark the seriousness of the misconduct.
63. The Committee then considered if a Severe Reprimand was appropriate. The guidance indicates that a Severe Reprimand would usually be applied in situations where the conduct is of a serious nature but where there are circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public and there is evidence of the individual's understanding and appreciation of the conduct found proved. Ms Jain's misconduct was potentially harmful to the regulatory framework as set out by ACCA, as her lack of engagement with her Regulator was in relation to her behaviour during professional exams. There was clearly not an isolated incident. The Committee had seen no evidence of her insight into her failings, or any remorse. Ms Jain's limited good character did not offset the seriousness of these actions.
64. The Committee considered the ACCA guidance on the approach to be taken for Exclusion. The guidance also states that 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 or student to engage with their professional regulator.
65. The Committee considered that Ms Jain's behaviour involved a number of features referenced in ACCA's guidance in relation to removal from student membership. The acts of Ms Jain could potentially have had an adverse impact on the public and represented a serious departure from professional standards. The Committee also considered that there was nothing exceptional in Ms Jain's case that would allow it to consider a lesser sanction than removal from student

registration. The students' interests are subordinate to the public interest. The Committee concluded that the only appropriate and proportionate sanction was removal from the student register.

66. The Committee noted that the default period of exclusion is 12 months. The Committee decided not to extend the period, given the mechanisms in place at ACCA for readmission.

EFFECTIVE DATE OF ORDER

67. The Committee noted that ACCA have not made an application for an immediate order. ACCA submitted that the risk to the public is not sufficiently high to make an immediate order.
68. The Committee also concluded that the removal as a student member from the Register should not be immediate under Regulation 20(1)(b). Therefore, it should take effect at the expiry of the appeal period.

COSTS AND REASONS

69. ACCA submitted a Schedule of costs and applied for costs against Ms Jain in the sum of £5,731.50. Mr Halliday went through the costs schedule and confirmed that there was a slight overestimate of the time required for the hearing and the costs applied for required some adjustment.
70. The member has not submitted documents relating to their financial position for the Committee to consider
71. The Committee having considered ACCA's guidance as to costs, decided that Ms Jain should meet the costs of the proceedings in principle. The Costs applied for were in general fair and proportionate. Accordingly, the Committee has decided it would be reasonable and proportionate to award ACCA costs in the sum of £5,000.00 to reflect the shorter hearing duration.

Ms Kathryn Douglas
Chair
10 October 2024

