

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Dhanush Perumalla Kumar

Heard on: Thursday, 25 July 2024

Location: Held Remotely via Microsoft Teams

Committee: Mr Martin Winter (Chair)
Dr Beth Picton (Accountant)
Mr Colin Childs (Lay)

Legal Adviser: Mr Ashraf Khan

**Persons present
and capacity:** Mr Ben Jowett (ACCA Case Presenter)
Miss Nicole Boateng (Hearings Officer)

Observers: Mr Bill Matthews (Appointments Board)

Summary Removed from the student register

Costs: £180.00

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INTRODUCTION

1. The Disciplinary Committee (“the Committee”) met to hear allegations against Mr Dhanush Perumalla Kumar. The hearing was scheduled to last 1 day. Mr Kumar did not attend nor was he represented. ACCA was represented by Mr Jowett.
2. The papers before the Committee consisted of a Service Bundle consisting of 24 pages, the Hearing Bundle consisting of 159 pages and an Additional Bundle consisting of 3 pages. The Committee also viewed a recording of Mr Kumar’s examination of 3 hours and 38 minutes duration.

ALLEGATIONS

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

1. On 9 September 2021, during a session-based Financial Reporting (FR) exam:
 - (a) Contrary to Exam Regulation 20, permitted a third party or parties to be in the same room in which he was sitting his exam.
 - (b) Contrary to Exam Regulation 3, during the exam sought to deceive the proctor by denying the presence of a third party or parties as referred to in paragraph 1 (a) above.
2. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), failed to co-operate with the investigation of a complaint, in that he did not respond fully or adequately to any or all of ACCA’s correspondence sent on:
 - (a) 7 January 2022;
 - (b) 21 January 2022;
 - (c) 4 February 2022.
3. By reason of the above matters Mr Kumar 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).

PRELIMINARY APPLICATIONS

Service of Papers

3. The Committee was informed that Mr Kumar had been served with a notice of today's hearing, together with the necessary papers via electronic mail on 26 June 2024.
4. The Committee was satisfied that notice had been sent to Mr Kumar'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 Mr Kumar has been given 28 days' notice with the necessary information required in accordance with CDR 10.
5. The Committee decided that Mr Kumar had been properly served with Notice of Proceedings.

Proceeding in absence

6. The Committee noted a series of communications between ACCA and Mr Kumar on 11 July 2024. Mr Kumar emailed ACCA and advised that whilst he could attend, he was not familiar with the disciplinary process and therefore he would not be attending the hearing. Clarification was sought later that afternoon by ACCA. Mr Kumar stated he would not be attending. ACCA had sought to encourage Mr Kumar to attend the hearing and speak to the Legal Adviser and Case Presenter.
7. On 18 July 2024, ACCA attempted to contact Mr Kumar by phone to ascertain whether he will attend the hearing. He did not answer. This was followed up with an email seeking the same information. Mr Kumar answered the email later

that day confirming he would not be attending and he is comfortable with the Committee making a decision in his absence.

8. On 23 July 2024, ACCA provided Mr Kumar the MS Teams link, should he choose to join the hearing. Mr Kumar was reminded that he could speak to the Legal Adviser and Case Presenter before the hearing.
9. The Committee considered that ACCA had taken reasonable steps to encourage Mr Kumar to attend the hearing. The Committee was satisfied that the emails had been sent to the address on the ACCA's register and that there was a record of the emails having been delivered successfully. The Committee noted that Mr Kumar had decided not to attend and agreed to the hearing proceeding in his absence. The Committee concluded, on the balance of probabilities, that Mr Kumar was aware of today's hearing and had voluntarily absented himself.
10. 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.

Application to amend Allegation 2(b)

11. ACCA made an application to amend Allegation 2(b) which currently reads as follows:

2. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), failed to co-operate with the investigation of a complaint, in that he did not respond fully or adequately to any or all of ACCA's correspondence sent on:

(b) 24 January 2022;

12. ACCA applied to amend particular (b) of the allegation to read as follows:

(b) 21 January 2022

13. ACCA stated the amendment was required to correct a minor typographical error, which was evident from the papers served. ACCA submitted Mr Kumar

has been informed of this proposed amendment and he has not responded. ACCA submitted no prejudice would be caused to Mr Kumar.

14. The Committee decided this was a minor amendment which caused Mr Kumar no prejudice. Accordingly, pursuant to CDR 10 (5) (a), the Committee allowed the application to amend.

Application for the entire hearing to be held in private

15. ACCA informed the Committee that Mr Kumar had requested the whole hearing to be held in private in the Case Management Form, although he had not provided any details. ACCA stated that the form was completed some time ago and it was Mr Kumar's intention at the time to give evidence, which may have included matters of a personal and private nature. However, the position has now changed and there is nothing preventing this case from being heard in public.
16. The Committee noted that Regulation 11(1)(a) CDR, provides that hearings should be conducted in public unless there were particular circumstances which justify the hearing being held either wholly or partly in private.
17. The Committee determined there was nothing in the papers to suggest the hearing should be held in private. The Committee concluded that the case would be heard in public. Matters which touched on private issues, will be deemed as private as and when necessary.

BACKGROUND

18. On 8 September 2016, ACCA registered Mr Kumar as a student.
19. On 9 September 2021, Mr Kumar took a session-based Financial Reporting (FR) examination (the 'Exam') remotely. Towards the end of the Exam, the proctor (online invigilator) became concerned. This was noted in an 'SCRS' Incident Report made by the proctor later that day: *"Candidate had another person in the room looking at the screen. When asked afterward if anyone was in the room, candidate denied that anyone was in the room. Exam revoked... When asked to do the 360 view of room, candidate waited until the person exited the room although the door was left open. Other person was pointing at screen communicating with candidate"*.

20. ACCA's Senior Examinations Administrator confirmed in the Remote Session CBE Irregular Referral Form that Mr Kumar was provided with a copy of the Exam Regulations and Guidelines in force at the time of the Exam, when he accepted the terms and conditions at the time of booking the Exam.
21. An investigation was commenced. This has involved obtaining documents and video footage relating to the Exam. In particular, the video footage obtained has revealed the ongoing presence of an additional person in the room where the Exam attempt was taking place, a fact which Mr Kumar denies to the proctor.
22. In spite of being written to by ACCA's investigations team formally on three occasions, Mr Kumar has not provided adequate explanatory responses to the concerns.

ALLEGATION 1 (a): contrary to Exam Regulation 20, permitted a third party or parties to be in the same room in which he was sitting his exam.

23. Mr Kumar takes an authorised break at 1:07:04 as sanctioned by the proctor in the Chat Log at 14:18:16. This provides a clear link to the Chat Log timing, where the break is authorised approximately 30 minutes after the exam launch.
24. Mr Kumar's FR exam was launched at 13:48:16, as noted in the PearsonVUE Activity Log and the Chat Log (13:48:51). This appears to correspond to video footage timestamp approx. 0:38:00. This is incorrectly calculated in the 7 January 2022 letter which assumes a launch time of approx. 0:48:00 in the footage.
25. The 7 January 2022 letter to Mr Kumar includes images relating to many of the key timestamps in the Exam footage.
26. The video footage shows that an item, object or similar with the appearance of dark curly hair belonging to a third party can be seen in frame just after the start of the Exam at:
 - 0:46:34
 - 0:46:38 – 0:46:45
 - 0:46:53 – 0:49:10

27. The video footage further shows the presence in frame of the hair and/or face of a third party at times during the Exam which include:

- 1:18:16 (hair)
- 1:23:37 (hair)
- 1:23:47 – 1:24:01 (hair and glasses)
- 3:23:33 – 3:23:36 (hair and finger)
- 3:24:46 – 3:24:49 (hair – less obvious)
- 3:32:01 (hair and glasses)

28. The video footage also shows further presence in frame of a finger, hand or arm a third party at times during the Exam which include:

- 1:23:02 a hand/finger is seen briefly in frame
- 2:44:13 – 15 the third party's arm reaches on screen as if to retrieve or deposit an item, or adjust the far side of the laptop, or similar
- 2:51:09 – fingers point on screen
- 3:24:09 – an arm is in frame already at this point and a hand moves, possibly holding a mobile phone or other device
- 3:30:23 – a hand moves in and out of frame
- 3:31:00 – 3:31:02 – a hand reaches in from the candidate's right as if adjusting/touching the keyboard or similar

29. The video footage also shows further presence in frame of the shoulder and/or sleeve of a third party at times during the Exam which include:

- 3:20:49
- 3:21:52
- 3:22:04
- 3:22:07 – 08
- 3:22:47 – 49
- 3:22:52 – 54
- 3:22:59 – 3:23:10
- 3:23:12 – 14
- 3:23:17 – 20
- 3:23:49 – 3:23:58
- 3:24:06 – 3:24:25
- 3:24:30
- 3:24:32 – 3:24:41

- 3:24:50 – 3:25:08
 - 3:25:14 – 15
 - 3:25:17 – 18
 - 3:25:20 – 3:25:37
 - 3:25:41 – 55
 - 3:26:09 – 39
 - 3:26:44 – 3:27:20
 - 3:28:20
 - 3:28:25 – 28
 - 3:28:41 – 50
 - 3:29:40
30. Notably, the candidate does not explore the adjoining room (through an open doorway) during the initial room pan and does nothing to encourage the third party (or parties) seen in the footage next to him, to leave at any point.
31. The Exam Guidelines also state that *“Wherever you choose to sit the exam... your screen should not be visible to anyone else”*. Given the position of the third party’s line of vision, there seems little way in which this could be the case for Mr Kumar.
- ALLEGATION 1(b): Contrary to Exam Regulation 3, during the exam sought to deceive the proctor by denying the presence of a third party or parties as referred to in paragraph 1 (a) above.**
32. The proctor initiates a room pan to allay their concerns about the presence of a third party, which can be seen in the footage at 3:35:22. In the SCRS Incident Report, the proctor specified that *“When asked ... if anyone was in the room, candidate denied that anyone was in the room”*.
33. In the Activity Log, the proctor noted:
- at 16:38:34 “Candidate had other person in room staring at screen”
 - at 16:48:48 “Multiple people: other person in room”
34. Mr Kumar’s denial of the presence of a third party can be seen in the Chat Log:
- 09-09-21, 16:45:49 Carlonn: Hi candidate this is your proctor
 - 09-09-21, 16:46:39 Carlonn: 360 room scan

- 09-09-21, 16:46:44 Carlonn: show room
 - 09-09-21, 16:47:34 Carlonn: Hi candidate, is there anyone in the room with you?
 - 09-09-21, 16:47:40 Dhanush Perumalla Kumar: is it ok sir
 - 09-09-21, 16:47:47 Dhanush Perumalla Kumar: no sir
 - 09-09-21, 16:47:55 Carlonn: Was there anyone in the room with you?
 - 09-09-21, 16:48:10 Dhanush Perumalla Kumar: no sir no one is in my room
35. While Mr Kumar is asked the question in the past tense and answers in the present tense, given his acceptance of the third party (or parties) in close proximity to him during the Exam, there can be no doubt that he knew that this denial was designed to mislead the proctor.
36. In his letter of 25 September 2021 to the Professional Conduct Team, Mr Kumar states, in contradiction of his previous response, *“...one of my family relative accidentally entered my room considering that I have been submitted my exam, where I shouldn't talk to other individuals as per ACCA regulations... then he saw my laptop and knowing that I'm still writing my exam he left my exam space and that moment I think proctor may notice that there is some other in my room”* [sic].
37. Mr Kumar's reasoning during the Exam that he was alone, juxtaposed with his later admission that a third party had been in the room, but in circumstances very much at odds with the observations on the video footage, supports the case that the third party was present.
38. At several points, the third party is seen reaching visibly across or touching the laptop.
- 2:44:13 – 15 the third party's arm reaches on screen as if to retrieve or deposit an item, or adjust the far side of the laptop, or similar.
 - 3:31:00 – 3:31:02 – a hand reaches in from the candidate's right as if adjusting/touching the keyboard or similar.
39. In the light of his communications prior to receiving enquiries from ACCA, which seem mainly to have been regarding the release of his Exam results, Mr Kumar's lack of engagement with the investigations process suggests an

unwillingness to provide any proper explanation regarding the events noted above.

ALLEGATION 2: Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), failed to co-operate with the investigation of a complaint

40. Mr Kumar has a professional obligation to co-operate with ACCA's enquiries and his failure to answer ACCA's enquiries has left unexplained various anomalies which can be observed when viewing the video footage.
41. On 7 January 2022, ACCA wrote to Mr Kumar at his registered email address attaching a letter. This showed a series of screenshots taken from the footage of his 9 September 2021 FR exam and asked a series of questions. On 10 January 2022, Mr Kumar was also sent a secure link to his exam video footage. The deadline for a response given in the covering email was 20 January 2022. Mr Kumar failed to respond.
42. On 21 January 2022, ACCA sent Mr Kumar a first formal reminder of his duty to co-operate with the investigation. This correspondence attached a further copy of the 7 January 2022 letter. The deadline to respond was 3 February 2022. Mr Kumar failed to respond.
43. On 4 February 2022, ACCA sent Mr Kumar a second and final formal reminder of the duty to co-operate with the investigation, which included a copy of the 7 January 2022 and 21 January 2022 letters. This had a response deadline of 17 February 2022. Mr Kumar failed to respond.
44. Mr Kumar's emails have been sent to the email address he has registered on his ACCA account. They have not been bounced back by the case management system.

ACCA Submissions on Facts

45. ACCA submitted that the allegations referred to above are capable of proof by reference to the evidence and the documents in the bundle of documents, as referenced in the evidence table.

ACCA Submissions on Misconduct

46. ACCA submitted that 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.
47. ACCA submitted that 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 a serious matter.
48. ACCA submitted that 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.
49. ACCA submitted that a failure to co-operate fully with ACCA is serious, undermining its opportunity to regulate the profession properly.
50. ACCA submitted that a 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.
51. ACCA submitted that the facts that underlie the Allegations, if proved, amount to serious professional misconduct, both individually and when considered in their totality, in that the conduct brings discredit to Mr Kumar, ACCA and the wider profession.

Liability to disciplinary action

52. ACCA submitted that Mr Kumar has breached several exam Regulations. If the Committee is not persuaded that the same amounts to misconduct, then to the extent it is found Mr Kumar has breached any or all of the exam regulations alleged, such breaches give rise to liability to disciplinary action pursuant to byelaw 8(a)(iii).

Submissions made by Mr Kumar

53. Whilst Mr Kumar had not attended the hearing, the Committee noted that he has admitted the presence of a third party for part of the Exam in his written comments to the ACCA. However, he has not accepted the extended presence of a third party or parties; that he deceived the proctor in the manner alleged; or that he is guilty of misconduct.

DECISION ON FACTS/ALLEGATIONS AND REASONS

54. The Committee took into account ACCA's written representations which were supplemented by Mr Jowett orally. The Committee took into account written responses from Mr Kumar. The Committee considered legal advice from the Legal Adviser, which it accepted.
55. The Committee considered Allegation 1(a) and (b).
56. The Committee determined that the video evidence clearly establishes the presence of at least one person in the room with Mr Kumar at many points during the exam. The Committee also found that Mr Kumar appears to acknowledge and recognise that there is someone else in the room with him but does nothing to remove them.
57. The Committee also noted that the proctor twice asked Mr Kumar if someone was in the room with him. Mr Kumar denied there was anyone in the room. Given the video evidence clearly shows the presence of at least one third party, the Committee determined Mr Kumar must have sought to deceive the proctor.
58. Mr Kumar has since asserted that this was accidental and that at the end of the exam a family member walked in.
59. The Committee determined this explanation was contradicted by the video evidence and the explanation given by Mr Kumar therefore is not credible. Accordingly, the Committee was satisfied on the balance of probabilities Mr Kumar permitted at least one other third party to be present in the same room as him whilst he was taking the ACCA exam.
60. The Committee found Allegation 1(a) and (b) proved on the balance of probabilities.

61. The Committee considered Allegation 2 (a) (b) and (c).
62. The Committee noted that ACCA wrote to Mr Kumar on 7 January 2022, seeking his assistance in relation to their investigation into this matter. Mr Kumar failed to respond.
63. On 21 January 2022, ACCA sent Mr Kumar a first formal reminder of his duty to co-operate with the investigation. The deadline to respond was 3 February 2022. Mr Kumar failed to respond.
64. On 4 February 2022, ACCA sent Mr Kumar a second and final formal reminder of the duty to co-operate with the investigation. This had a response deadline of 17 February 2022. Mr Kumar failed to respond.
65. The Committee noted that Mr Kumar has suggested he had attempted to respond on one occasion but the email had bounced back. The Committee was not provided with any evidence showing the email had bounced back. It determined that even if this was true, it is not sufficient for Mr Kumar to take no further action given his duty to cooperate.
66. Accordingly, the Committee found Allegation 2 and all its particulars proved on the balance of probabilities.
67. The Committee considered Allegation 3.
68. The Committee determined this was deliberate deception and failure to co-operate. In the Committee's judgement, this amounted to very serious professional misconduct. The Committee determined this flagrant breach of exam regulations and failing to co-operate with the regulator's investigation would be considered deplorable conduct by fellow professionals.
69. Accordingly, the Committee determined Mr Kumar was guilty of serious professional misconduct.

SANCTION AND REASONS

70. The Committee considered the available sanctions starting with the least serious. In reaching a decision on sanction, the Committee took into account

the public interest and Mr Kumar's own interests. It noted that the purpose of sanction was not punitive and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in the ACCA, and to declare and uphold proper standards of conduct and performance.

71. The Committee determined breaching exam regulations and failing to cooperate with an investigation is very serious.
72. The Committee considered whether any mitigating or aggravating factors featured in this case.
73. The Committee accepted that there were no previous findings against Mr Kumar. There was no evidence of any other mitigating factors in this case. In relation to mitigation, the Committee had not heard from Mr Kumar nor had it received any references or testimonials.
74. As for aggravating features, the Committee concluded there was no evidence of insight, remorse or reflection. Furthermore, Mr Kumar has not demonstrated any real understanding of the seriousness of his conduct. The Committee noted that he had involved a third party into his deceitful conduct. When questioned by the proctor during the exam, he denied any wrongdoing.
75. The Committee determined Mr Kumar engaged in a deliberate attempt to deceive the proctor and deliberately breached the regulations. Consequently, it could not rule out the risk that he will engage in this conduct again. The Committee also regarded Mr Kumar's behaviour as a breach of trust. The ACCA placed a high degree of trust in the student to conduct the exam in accordance with the rules. Mr Kumar breached that trust by his misconduct.
76. For the reasons set out above, the Committee determined deliberately breaching exam regulations is a serious matter and therefore taking no further action, admonishment, reprimand or a severe reprimand would be insufficient and inappropriate. The Committee was particularly mindful there was no early admission, no evidence of understanding or insight, reflection, remorse or apology from Mr Kumar. Had Mr Kumar successfully passed this exam, he would have presented a risk to the public. Given the serious nature of the misconduct, the Committee determined Mr Kumar's behaviour was a serious departure from relevant professional standards. The Committee determined the

only appropriate and proportionate sanction available is to order the removal of Mr Kumar from the student register.

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

EFFECTIVE DATE OF ORDER

78. 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 such an application. The Committee decided not to impose an immediate order.

COSTS AND REASON(S)

79. The Committee has been provided with a Detailed Costs Schedule.
80. The Committee concluded that ACCA was entitled to be awarded costs against Mr Kumar. The amount of costs for which ACCA applied was seven thousand three hundred and seventy-six pounds. (£7,376.00). Considering the nature of the investigation, the Committee carefully scrutinised the schedule and determined the costs incurred were reasonable, although it has decided to make a substantial adjustment given Mr Kumar's very limited means, as disclosed in the documentation he has provided the Committee.
81. Accordingly, the Committee has decided it would be reasonable and proportionate to award ACCA costs in the sum of one hundred and eighty pounds (£180.00).

Mr Martin Winter
Chair
25 July 2024