

HEARING

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

In the matter of: Ms Jeevitha Hennur Mahesh

Heard on: Thursday, 06 June 2024

Location: Remote via Microsoft Teams

Committee: Mr Andrew Gell (Chair)
Ms Joanne Royden-Turner (Accountant)
Mr Mark Mills (Lay)

Legal Adviser: Mr Robin Havard

**Persons present
and capacity:** Mr Benjamin Jowett (ACCA Case Presenter)
Ms Sofia Tumburi (Hearings Officer)

Summary Removed from the student register

Costs: £4,200

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1. The Committee had considered the following documents: a hearing bundle (pages 1 to 69), a video recording of the exam session on 08 December 2022, and a service bundle (pages 1 to 28). The Committee had also considered legal advice which it had accepted.
2. The Committee had read the letter dated 09 May 2024 containing the Notice of Proceedings, sent on the same day by ACCA by email to Ms Mahesh. It had noted the subsequent emails sent to Ms Mahesh with the necessary link and password to enable Ms Mahesh to gain access to the letter and the documents relating to this hearing.
3. The Committee was satisfied that such emails had been sent to her registered email address in accordance with regulation 22 of the Complaints and Disciplinary Regulations 2014 as amended ("CDR"). The Committee had noted that the emails had been delivered successfully. The emails and the documents to which Ms Mahesh had access also contained the necessary information in accordance with CDR10.
4. Consequently, the Committee decided that there had been effective service of proceedings on Ms Mahesh in accordance with the CDR.

PROCEEDING IN ABSENCE

5. On 17 May 2024, in the absence of any response from Ms Mahesh to the email of 09 May 2024, ACCA sent an email to Ms Mahesh at the registered email address asking her to indicate whether she intended to attend the hearing or whether she was content for the hearing to proceed in her absence. The email reminded her of the date of hearing and of her ability to join the hearing either by telephone or video link. The email had been delivered successfully. There was no response.
6. On 29 May 2024, ACCA sent a further email to Ms Mahesh notifying her once again of the date of the hearing and asking her whether she intended to attend and, if not, whether she was content for the hearing to proceed in her absence. The email had been delivered successfully. There was no response.
7. On 31 May 2024, ACCA was able to speak with Ms Mahesh on the phone and asked her whether she intended to attend the hearing. ACCA was asked to call back on the following Monday. When asked whether she had received the

- documentation sent on 08 December 2023, Ms Mahesh did not respond but said again for ACCA to call her on Monday. She then disconnected the call and attempts to call her back were unsuccessful. ACCA sent an email on the same day attaching a note of the conversation, confirming that ACCA would call her on the following Monday.
8. On 03 June 2024, ACCA duly contacted Ms Mahesh. Initially, there was no answer and there was no facility to leave a message. ACCA tried again in the afternoon to call but there was no answer.
 9. On 04 June 2024, ACCA called again and was able to speak to Ms Mahesh. She stated that she was unable to attend the hearing on 06 June 2024 as she was attending college and she asked for the matter to be postponed. ACCA stated that, if she needed an adjournment, she should make an application. Ms Mahesh was directed to the guidance relating to such an application which she would find in her SharePoint folder. Ms Mahesh then asked if she had to attend. She was told that she did not have to but it was advisable for her to do so. Ms Mahesh stated that she would not be attending and consented to the hearing proceeding in her absence.
 10. On 04 June 2024, ACCA sent an email to her with a note of the phone conversation.
 11. Later on 04 June 2024, ACCA sent an email confirming what had been said by Ms Mahesh, namely that she did not intend to attend and that she was content for the matter to proceed in her absence. A link to the hearing was included in case Ms Mahesh changed her mind and decided to attend.
 12. The Committee was satisfied that ACCA had done all that it could reasonably be expected to do to engage Ms Mahesh in the hearing. The Committee concluded that Ms Mahesh was aware of the hearing date but that she had no intention of participating in the hearing, nor had she requested an adjournment. The Committee noted that Ms Mahesh was content for the hearing to proceed in her absence.
 13. The Committee concluded that Ms Mahesh had voluntarily absented herself from the hearing, which she could have joined by telephone or video link. She had therefore waived her right to attend.

14. The Committee was also satisfied that, taking account of the seriousness of the allegations, it was in the public interest to proceed. The Committee did not consider that any benefit would be derived in adjourning the hearing and, as stated, no such application had been made.
15. Finally, the Committee considered that it was in a position to reach proper findings of fact on the evidence presented to it by ACCA and the response which had been provided by Ms Mahesh in the course of the investigation.
16. The Committee ordered that the hearing should proceed in the absence of Ms Mahesh.

ALLEGATIONS

Ms Jeevitha Hennur Mahesh an ACCA student, on 08 December 2022, in respect of a remotely invigilated Financial Accounting exam (the exam):

1. Used an unauthorised item namely a mobile phone, contrary to exam regulation 5(a).
2. Used the unauthorised item as referred to in allegation 1 above to gain an unfair advantage in her exam.
3. Engaged in conduct as described above which was designed to assist her in her exam attempt, contrary to regulation 10.
4. Ms Hennur Mahesh's conduct in respect of allegations 1 to 3 above was in addition:
 - I. Dishonest, in that by her own admission she was looking for notes that could assist her with her exam and thereby obtain an unfair advantage in the exam, or in the alternative,
 - II. Demonstrates a failure to act with integrity.
5. By reason of the above Ms Hennur Mahesh is:
 - I. Guilty of misconduct pursuant to bye-law 8(a)(i) in respect of the conduct referred to above or, in the alternative,

- II. Liable to disciplinary action pursuant to bye-law 8(a)(iii) (in respect of allegations 1 and 3 only).

DECISION ON FACTS, ALLEGATIONS AND REASONS

ALLEGATIONS 1, 2 AND 3

17. In reaching its findings in respect of allegations 1, 2 and 3, the Committee relied upon the email correspondence and documents contained in ACCA's bundle and noted the Incident Report provided by the proctor (i.e. a remote exam invigilator) prepared following the exam. It had also viewed the video footage from the video taken on 08 December 2022. The Committee had taken account of the submissions of Mr Jowett. The Committee also listened to legal advice, which it accepted.
18. The Committee took into consideration that the case as presented by ACCA had not been challenged by Ms Mahesh. Ms Mahesh admitted to the conduct alleged (if not specifically to the allegations themselves).
19. Ms Mahesh became an ACCA student on 18 September 2019.
20. On 08 December 2022, Ms Mahesh sat an ACCA remote invigilated Financial Accounting exam. The exam was terminated after she was observed using her phone and regularly looking down and off screen during the exam.
21. On 28 December 2022, ACCA's Exams Operations team emailed Ms Mahesh informing her that a referral had been made to ACCA's Professional Conduct Department regarding her conduct in the exam.
22. The exams footage video and exam chat log was reviewed by the Investigations Officer. The total run of the exam footage video lasts 1 hour 25 minutes and 29 seconds. The Investigations Officer identified a series of suspicious events, the exam commencing six minutes after the video recording started:
- (a) At the following times, Ms Mahesh appears to be looking and scrolling through her phone:
- 17m08s to 17m10s
 - 36m58s

- 43m04s to 43m10s
- 43m15s to 43m23s
- 48m13s to 00h48m22
- 48m30s to 48m35s
- 48m39s to 48m43s
- 49m04s to 49m12s
- 49m21s to 49m35s

(b) At the following times, Ms Mahesh's full face is not visible on camera:

- 06m41s
- 16m57s to 18m14s and beyond
- 33m25s
- 36m58s to 43m17s
- 58m10s
- 1h02m45s
- 1h05m26s

(c) A mobile phone can be heard vibrating and a message alert can be heard in the background.

- 36m22s
- 38m18s
- 49m47s

23. The Committee had viewed the video footage and found that the behaviour outlined above was an accurate account of what could be observed on the video.

24. The Investigations Officer initially wrote to Ms Mahesh's registered email address on 06 April 2023 and requested her comments and observations in respect of these matters by 20 April 2023. The Investigations Officer also arranged for a copy of the exam video to be sent to Ms Hennur Mahesh on 11 April 2023.

25. In her response on 19 April 2023, Ms Mahesh confirmed as follows:

"Dear ACCA,

Subject: Communications from ACCA case ref UF8628328

Here are my answers to your questions with the numbering.

1.1 Yes, I was using my phone during the exam.

1.4 I did read the guidelines, I apologize for my mistake.

2.1 I only have vibrate mode on my phone, I don't have an option to silent it.

2.2 Since the phone was on my laptop, the vibration was audible.

The information you have received from the proctor is right. I am extremely guilty for what I did, I apologize for what I have done. I have also taken a re-exam the next week itself, on 15-12-2022, I took that exam with complete sincerity, so I please request you to consider the re-exam and give me a second chance. I once again apologize for violating the guidelines.

Yours sincerely

H M Jeevitha"

26. On 30 April 2023, in answer to further questions from ACCA, she stated in an email to ACCA:

"Dear ACCA,

Subject: Communications from ACCA case ref UF8628328

Yes, I did use my phone for assistance during my exam. I was using my mobile to check some of the notes which can be of help for my exam, I know that was wrong. I apologize for what I did.

There is a window next to the table where I took my exam, since there was reflection falling on my laptop I was not able to read the questions properly, that is the reason I adjusted my laptop to be able to see the question clearly, but that led to my face not being fully visible.

I had also taken a re-exam the next week itself, on 15-12-2022, I took that exam with complete sincerity, so I please request you to consider the re-exam and provide me with a second chance. I once again apologize for violating the guidelines.

Yours sincerely

H M Jeevitha"

27. Having considered the requirements of the Exam Regulations, and in particular, Exam Regulations 5 and 10, the Committee was satisfied that the conduct of Ms Mahesh in the course of the remote exam on 08 December 2022 was in breach of such regulations.
28. On this basis, the Committee found allegations 1, 2 and 3 proved.

ALLEGATION 4(I)

29. The Committee relied on its findings of fact under allegations 1, 2 and 3 above.
30. The Committee reminded itself of the test for dishonesty as set out in the case of *Ivey v Genting Casinos* [2017] UKSC 67.
31. The Committee took into account the admission of Ms Mahesh that she had knowledge of the Exam Regulations and that, in looking at notes on her phone in order to assist her in the course of the exam, her conduct was wrong.
32. The Committee found that, on the basis on which it had found allegations 1, 2 and 3 proved, Ms Mahesh knew that it was improper conduct to look at notes on her phone in the course of the exam and specifically said in her emails that she knew it was not allowed.
33. The Committee was satisfied that, by the standards of ordinary decent people, such conduct, namely cheating in a professional exam, would be considered to be dishonest.
34. Consequently, the Committee found allegation 4(i) proved.

ALLEGATION 4(II)

35. On the basis that this allegation was pleaded in the alternative to allegation 4(i), the Committee made no finding in respect of it.

ALLEGATION 5(I)

36. Taking account of its findings in respect of allegations 1, 2, 3 and 4(i) regarding Ms Mahesh's conduct during the examination, the Committee was satisfied that she was guilty of misconduct in that such conduct could properly be described

as deplorable. In the Committee's judgement, it brought discredit to Ms Mahesh, the Association and the accountancy profession.

37. Therefore, the Committee found allegation 5(i) proved.

ALLEGATION 5(II)

38. On the basis that this allegation was pleaded in the alternative to allegation 5(i), the Committee made no finding in respect of it.

SANCTION AND REASONS

39. The Committee considered what sanction, if any, to impose, taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions, and the principle of proportionality. It had also listened to the submissions of Mr Jowett, and legal advice from the Legal Adviser which it accepted.
40. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no order.
41. The Committee was mindful of the fact that its role was not to be punitive and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in ACCA, and to declare and uphold proper standards of conduct and performance.
42. The Committee considered whether any mitigating or aggravating factors featured in this case.
43. The Committee accepted that there were no previous findings against Ms Mahesh.
44. The Committee had no information regarding the personal circumstances of Ms Mahesh nor had it been provided with any testimonials or references as to Ms Mahesh's character.
45. However, the Committee was satisfied that, having been caught cheating, Ms Mahesh had cooperated with ACCA. In her emails of 19 and 30 April 2024, she had shown a level of contrition and limited insight.

46. The Committee had found Ms Mahesh to have acted dishonestly during the course of an exam which the Committee considered to be very serious.
47. The Committee found such serious conduct to be aggravated in that, by cheating in the exam, she may have progressed in her career when not competent to do so. In that way, she may have represented a risk to the public.
48. On the basis of its findings, the Committee concluded that neither an admonishment nor a reprimand would represent a sufficient and proportionate outcome. Neither sanction would adequately reflect the seriousness of the Committee's findings.
49. The Committee then considered whether a severe reprimand would be an appropriate sanction. Again, taking account of the seriousness of its findings, and reflecting on the criteria suggested in the Guidance, the Committee did not consider that a severe reprimand would be sufficient or proportionate.
50. The whole purpose of the Exam Regulations is to maintain the integrity of the process to ensure that it is fair and that, in following that process and complying with the Regulations, it represents a proper test as to a person's competence to become an accountant.
51. The Committee found that Ms Mahesh's dishonest conduct represented a serious departure from the professional standards expected of an accountant. It was behaviour which was fundamentally incompatible with being a member.
52. The Committee had considered whether there were any reasons which were so exceptional or remarkable that it would not be necessary to remove Ms Mahesh from the student register but could find none.
53. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Ms Mahesh shall be removed from the student register.

COSTS AND REASONS

54. The Committee had been provided with a simple costs schedule (page 1) and a detailed costs schedule (pages 1 and 2) relating to ACCA's claim for costs. The Committee had also taken account of the Guidance on costs.

55. The Committee concluded that ACCA was entitled to be awarded costs against Ms Mahesh, all allegations having been found proved. The amount of costs for which ACCA applied was £5,127.50. The Committee did not consider that the claim was unreasonable but the hearing had taken less time than estimated.
56. Ms Mahesh had not provided ACCA with any documentary evidence of her means. The Committee was satisfied that, in the correspondence sent to her, Ms Mahesh had been warned at the outset of the importance of providing details of her financial circumstances and of ACCA's intention to apply for costs if the allegations were found proved.
57. In the absence of any information from Ms Mahesh, the Committee approached its assessment on the basis that she was able to pay any amount of costs awarded against her.
58. In all the circumstances, and in exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £4,200.00.

EFFECTIVE DATE OF ORDER

59. The Committee had considered whether the order should have immediate effect. However, ACCA did not seek such an order and no interim order was in place. The Committee did not consider that Ms Mahesh presented a current or immediate risk to the public. It therefore concluded it was not in the interests of the public to make an order which takes effect immediately.
60. The Committee decided that this order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

Mr Andrew Gell
Chair
06 June 2024