

HEARING

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

In the matter of: Ms Pragati Jain

Heard on: Wednesday, 16 October 2024 and Thursday, 17 October 2024

Location: Remotely via Microsoft Teams

Committee: Mr Andrew Gell (Chair)
Ms Diane Meikle (Accountant)
Mr Ryan Moore (Lay)

Legal Adviser: Mr David Marshall

Persons present

and capacity: Mr Richard Ive (Case Presenter on behalf of ACCA)
Miss Nicole Boateng (Hearings Officer)
Ms Pragati Jain (Student Member)
Mr Zaidul Hassan (Interpreter)

Summary Removed from the student register

Costs: £500

1. The Committee heard an allegation of misconduct against Ms Jain. Mr Ive appeared for ACCA. Ms Jain was present and represented herself.
2. The Committee had a Main Bundle of papers containing 93 pages, a Tabled Additional Bundles containing 9 pages, a Case Management Form completed by Ms Jain on 14 October 2024 (22 pages), a Witness Statement of Ms Jain dated 14 October 2024 (3 pages) and a Service Bundle containing 17 pages.

It also had video recordings of the examinations with which this hearing was concerned, lasting 1 hour, 17 minutes, 18 seconds; and 1 hour, 21 minutes, 24 seconds respectively. At the sanctions stage Ms Jain provided a set of recent bank statements, a statement of means and a letter from her former employer confirming that her employment had terminated.

PRELIMINARY ISSUE

3. In her Case Management Form Ms Jain asked for all of her case to be heard in private:

I would request the committee to conduct the case in private considering the sensitivity of the allegations and the further impact it might have on my personal or professional life. A private discussion will allow a more open and honest dialogue without external pressures.

4. She made an application in similar terms at the start of the hearing. She said that since she did not have any lawyer to represent her she just wanted to have a private conversation.
5. The Legal Adviser reminded the Committee that Rule 11 provides that hearings of the Disciplinary Committee shall be conducted in public unless the Committee is satisfied that the particular circumstances of the case outweigh the public interest in holding the hearing in public. The courts had repeatedly emphasised that there was a strong public policy that final disciplinary hearings should normally be conducted under public scrutiny.
6. The Committee considered that Ms Jain had not put forward an adequate reason for departing from the general rule that hearings should be held in public. It refused the application.

ALLEGATION(S)/BRIEF BACKGROUND

7. Ms Jain became an ACCA student on 6 November 2019. On 6 December 2022 she took an ACCA on-demand Strategic Business Leader examination. This

was a computer-based exam taken at a place of her choosing in her home country. The exam was remotely invigilated by a company called ProctorU. The invigilator (referred to by ProctorU as a 'Proctor') was not present but could view what was on Ms Jain's screen and could communicate directly if required through chat messages or by phoning her. The invigilator also had video and audio access to the camera mounted on Ms Jain's screen. The video/audio from the laptop camera was recorded. The examination terminated early in circumstances which appeared to be in dispute.

8. Ms Jain was permitted to re-take the exam on 13 December 2022, in the same way as before. Again, the exam was terminated early as shown by the Proctor's report submitted later. The Proctor reported that he had terminated the exam because he or she had seen Ms Jain using a mobile phone.
9. ACCA then commenced an investigation. ACCA alleged that Ms Jain failed to cooperate with the investigation by ignoring ACCA's requests for information.
10. Ms Jain faced the following allegations:

Allegations

Ms Pragati Jain, an ACCA student in respect of two sittings of her remotely invigilated Strategic Business Leader (SBL) exams held on 06 & 13 December 2022 (the exams):

1. Failed to comply with instructions issued by the exam Proctor before her exams begun that she should place her phone out of arms reach, contrary to Exam Regulation 2.
2. Used an unauthorised item namely a mobile phone, contrary to Exam Regulation 5 (a).
3. Used the unauthorised item as referred to in Allegation 2 above to gain an unfair advantage in one or both exams.

4. Ms Pragati Jain's conduct in respect of Allegation 2 above was in addition:
 - i. Dishonest, in that by using her phone in one or both exams she intended to gain an advantage in either or both those exams, or in the alternative;
 - ii. Demonstrates a failure to act with integrity.

5. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), Ms Pragati Jain 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) 06 April 2023;
 - (b) 24 April 2023;
 - (c) 26 May 2023; and
 - (d) 29 September 2023

6. By reason of the above, Ms Pragati Jain 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, 2 and 5 only).

DECISION ON FACTS/ALLEGATION(S) AND REASONS

11. In her Case Management Form and again at the start of the hearing Ms Jain admitted Allegation 2 and the Chair announced that Allegation 2 was proved. The remaining allegations were in dispute.

12. Mr Ive did not call any witnesses but relied on the documentary evidence and the video/audio recordings. The Committee had viewed the videos before the

hearing and screen shots of critical points were included in the bundle. Ms Jain gave oral evidence and was cross-examined and questioned by the Committee.

13. Mr Ive submitted that the first exam had been terminated ('revoked') by the Proctor because Ms Jain had been observed using her phone during the exam. He referred to an incident report completed by the Proctor which evidenced this and also the 'chat log' of text communications between the Proctor and Ms Jain. This showed a conversation where Ms Jain was asked why she had used her phone and she said she had picked it up to put it on silent mode. The Proctor then said *'I'm going to end your exam, because [you] used phone, your phone should be out of your hands and if you had to mute the sound you should have let me know ...'*
14. Ms Jain's evidence was that the first exam was not terminated but ended *'because of connection issues'*. However, the Committee was satisfied by the contemporary evidence that it had been terminated by the Proctor for an apparent breach of the rules, as submitted.
15. In her closing submissions Ms Jain again denied any wrongdoing. She said that throughout her time as a student she had respected academic integrity.

Allegation 1

16. It was clear from the chat log that there was a 'greeting' stage before each exam commenced when the rules were explained to Ms Jain. It took the same form for both exams and seems to have followed a script. It included the Proctor saying, *'If you have any unauthorised items with you or in your workspace, please remove them now and place them out of arms reach.'* It was common ground that the mobile phone was an unauthorised item. Students taking remotely invigilated exams are required to have a phone in the room so that they can be contacted by the Proctor if necessary, but they are not permitted to use them without authorisation. The greeting process for both exams ended with standard text which included: *'Please put your phone on silent mode and out of your arms' reach.'*

17. The video evidence from both exams clearly showed Ms Jain holding the phone and looking at its screen on several occasions. This showed that the phone was within reach. Ms Jain accepted in her evidence that she had not put her phone on silent and it was not out of reach. She said that in the first exam she initially put it on vibrate mode. Her explanation for why she was seen using the phone for the first time during the first exam was that the vibrations were disturbing her so she picked it up to put it on silent mode. To explain the second occasion when she was seen using the phone she said that even the silent alerts were flashing and distracting her. To explain an occasion during the second exam when she was using her phone she said that she needed to take a photograph of the video captured by her camera because the Proctor was complaining that he could not see her. (Although there was nothing in the chat log or incident report to suggest that the Proctor asked Ms Jain to take such a photograph.) These explanations all support the allegation that Ms Jain's phone was within her reach during both exams.

18. The Committee found Allegation 1 proved.

Allegation 2

19. This was admitted and found proved at the start of the hearing.

Allegation 3

20. Exam Regulation 5(b) states that if unauthorised items are used *'it will be assumed that you intended to use the 'unauthorised items' to gain an unfair advantage in the exam. In any subsequent disciplinary proceedings, you will have to prove that you did not intend to use the 'unauthorised items' to gain an unfair advantage in the exam.'*

21. The main thrust of Ms Jain's defence was that although she used her phone on several occasions she had no intention to cheat or gain an unfair advantage. The Committee found her explanations for using the camera (set out above) to be implausible. If she had needed to put her phone on silent or move it away she could and should have asked permission from the Proctor but did not do

so. Despite the first exam being terminated for improper use of the phone, she repeated such conduct at her re-sit a week later. On that occasion she said it was necessary for her to take a picture of the video from her webcam to prove it was working. If that had been true, she surely would have checked with the Proctor before taking what she now knew was an action which could invalidate the entire exam. She was asked by the Committee whether she had produced the image she said she had taken but she said she had not. The Committee did not consider that she discharged the burden of proof.

22. A far more likely explanation for her use of the camera was that she thought it would benefit her in some way. Since students are not allowed to use their phones for their own purposes, that was gaining an unfair advantage.
23. The Committee found Allegation 3 proved.

Allegation 4

24. The Committee had no doubt that Ms Jain's actions would be regarded as dishonest by the standards of ordinary decent people. Ms Jain knew perfectly well that she was not allowed to have her phone within reach during the exam but chose to keep it by her and to use it repeatedly in two consecutive exams. While the Committee cannot know exactly what her objective was, it must have been something valuable enough to justify the risk she was running. That was an advantage that honest students do not have.
25. The Committee found Allegation 4(i) proved. It was therefore not necessary to consider the alternative allegation of lack of integrity in 4(ii).

Allegation 5

26. This raised a quite different issue. On 6 April 2023 ACCA notified Ms Jain that it had received a complaint about her conduct during the two exams. The letter provided a summary of the evidence and the potential charges against her. It asked a number of questions. There was no reply and three reminders were later sent as set out in the Allegation. There was no substantive reply to any of

them. Ms Jain did not dispute this. Her case was that she had not received any of these letters. She said that it was not until the date of the final letter (29 September 2023) that she became aware that ACCA was investigating her. On that day she wrote an email saying that there seemed to be a problem with the password but when the letter was re-sent she still did not answer the questions posed.

27. The Committee was told that ACCA uses an automated system to send confidential emails. This ensures that the substance of the email is encrypted. A password is provided separately. When the password is used to decrypt a message, ACCA receives a notification. It is therefore able to state definitively whether and when an email sent through this system has been opened. The Committee was provided with a file note showing that the system had been interrogated by a member of staff which revealed that each of the four emails referred to in the Allegation had been opened on, or within a few days of, the date they were sent. Ms Jain said that no other person had access to her email account. The Committee therefore concluded that Ms Jain had received and opened each of the emails soon after they were sent. It rejected her evidence to the contrary.
28. The questions asked by ACCA were reasonable ones to ask at the outset of an investigation and there was no excuse for Ms Jain to simply ignore them. She had a duty under the Regulations to cooperate but failed to do so.
29. The Committee found Allegation 5 proved.

Allegation 6 - Misconduct or Lack of integrity

30. The Committee was satisfied that the conduct proven against Ms Jain amounted to misconduct. Exam cheating, in whatever form, and dishonesty are amongst the most serious forms of misconduct a student can commit. They bring discredit on her, on ACCA and on the profession. Her actions would be regarded as deplorable by fellow students and members.
31. The Committee found Ms Jain to be guilty of misconduct as set out in Allegation

6(i). It was not necessary to consider the alternative, lesser, charge in 6(ii).

SANCTION(S) AND REASONS

32. The Committee considered what sanction, if any, to impose in light of its findings, having regard to ACCA's Guidance for Disciplinary Sanctions (2024). It first sought to identify mitigating and aggravating factors.
33. Ms Jain had no previous disciplinary findings against her in the three years that she had been a registered student. She had also recently made an admission to one of the allegations. This was Allegation 2, using a mobile phone during her exams as shown in the exam videos. These were mitigating factors, although not strong ones.
34. The main aggravating factor in relation to Allegations 1 to 4 was that Ms Jain had not shown any insight into the seriousness of what she had done or any remorse. She continued to deny dishonesty or an intention to cheat in her submissions on sanction and costs.
35. In relation to Allegation 5, ACCA's Guidance at section F puts failure to cooperate with a disciplinary investigation in the 'very serious' category. In this case, the failure extended for the entire period of the investigation so was at the top end of the scale of seriousness. At any point she could have made an attempt to respond to ACCA's questions but did not do so.
36. The Committee was satisfied that the misconduct required a sanction. The Committee considered the sanctions of admonishment and reprimand but concluded that these would be wholly inadequate to mark the seriousness of Ms Jain's failures. The Committee next considered the sanction of severe reprimand. The Guidance says that this can be applied:

In situations where the conduct is of a serious nature but there are particular 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.

37. This clearly did not apply to Ms Jain's case where there was no indication that she had any understanding of the importance of complying with exam regulations or of cooperating with her regulator. The fact that she repeated her exam misconduct only a week after being first caught demonstrated her attitude. Most of the suggested factors in the Sanctions Guidance were not present either.
38. The Committee considered its power to retain a student on the register but prevent the student from taking exams for a period. It considered that this would not be sufficient to mark the seriousness of her misconduct. In addition, Ms Jain could not at present be trusted to take another exam.
39. The next relevant sanction was removal from the student register. The Committee was satisfied that Ms Jain's conduct was incompatible with remaining registered as a student of ACCA and that this was the minimum sanction it could impose.
40. Ms Jain will be entitled to apply for readmission after one year. The Committee did not find it necessary to extend this period. If Ms Jain does apply she will have to persuade the Admissions and Licensing Committee that she has learnt the relevant lessons, has taken steps to ensure that there will be no repetition, and is a fit and proper person to be registered with ACCA.

COSTS AND REASONS

41. Mr Ive applied for costs totalling £12,250.50. The Committee was satisfied that the proceedings had been properly brought and that ACCA was entitled in principle to a contribution to its costs.
42. The costs claimed were significantly higher than usual. However, cases involving video evidence do take a long time to investigate and in this case there were two exams to consider. Furthermore, the case had occupied three hearing days. It was first listed to be heard on 13 August 2024. At that time nothing had been heard from Ms Jain and there had been no indication that

she wished to attend. However, she did join the hearing, an hour after it had started. That hearing had to be abandoned and was relisted for two days because Ms Jain had asked for an interpreter. The Committee was satisfied that the length of time spent was generally reasonable in all the circumstances.

43. Ms Jain provided detailed information about her means including an 8-page bank statement. She told the Committee that she had been employed but no longer had a job and was unemployed. She currently had no regular source of income. Her bank statement confirmed this. She was not supported by her parents. [PRIVATE]

EFFECTIVE DATE OF ORDER

44. Mr Ive did not apply for the order made (if any) to take immediate effect. The Committee did not consider that there would be a risk to the public sufficient to justify an immediate order. The order will therefore take effect at the normal time, after the expiry of the appeal period.

ORDER

45. The Committee ordered as follows:

- (a) Ms Pragati Jain shall be removed from the student register.
- (b) Ms Pragati Jain shall make a contribution to ACCA's costs of £500.

Mr Andrew Gell
Chair
17 October 2024