

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Yingjun Gu

Heard on: Tuesday, 6 August and Wednesday, 7 August 2019

Location: The Adelphi, 1-11 John Adam Street, London, WC2N
6AU

Committee: Dr Jonathan Page (Chairman)
Mr Martin Davis (Accountant)
Dr Hazel Bentall (Lay)

Legal Adviser: Mr David Marshall

Persons present

and capacity: Ms Sarah Cawley-Wilkinson (ACCA Case Presenter)
Mr Richard Lorkin (Hearings Officer, 06 August 2019)
Miss Rachael Davies (Hearings Officer, 07 August
2019)
Miss Yingjun Gu (Student)
Mr Zhibin Gu (Miss Gu's father)
Ms Yi-Hsin Cheng (Interpreter, Mandarin Language)

Observers: None

Outcome: **Severe Reprimand**
Disqualification from F7 examination, taken on 05
June 2018
Costs to be paid to ACCA in the sum of £1,000.

1. The Committee heard an allegation of misconduct against Miss Gu. Ms Cawley-Wilkinson appeared for ACCA. Miss Gu took part by telephone, supported by her father. An interpreter engaged by ACCA translated the entire proceedings between Mandarin and English.

ALLEGATIONS/BRIEF BACKGROUND

2. Miss Gu was registered as a student of ACCA on 6 June 2017. On 5 June 2018, she took the ACCA F7 examination at an examination centre in China. It is alleged that at her desk during the exam she was in possession of sheets of paper containing notes relevant to the exam. She faced the following allegations:

Allegation 1

- (a) During an F7 examination on 5 June 2018, Miss Yingjun Gu was in possession of unauthorised materials which she had at her desk contrary to Examination Regulations 4 and/ or 5.
- (b) Miss Yingjun Gu intended to use any or all of the materials set out at 1(a) above to gain an unfair advantage.
- (c) Miss Yingjun Gu's conduct in respect of 1(b) above was:
 - (i) Dishonest, in that Miss Yingjun Gu used or intended to use any or all of the unauthorised materials which she had at her desk to gain an unfair advantage;
 - (ii) Contrary to the Fundamental Principle of Integrity.

- (d) By reason of her conduct, Miss Yingjun Gu is:
- (i) Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the matters set out at 1(a) to 1(c) above; or
 - (ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of 1(a) above.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

3. At no point had Miss Gu denied being in possession of the papers in question. At the start of the hearing Miss Gu admitted Allegation 1(a). **The Committee found Allegation 1(a) proved.**
4. The crucial question for the Committee was whether Miss Gu used or intended to use the papers to cheat, or whether, as she said, she had brought them in by mistake, without using them or intending to use them to gain an unfair advantage.
5. The Examination Regulations applicable stated that a student was not allowed to take to the exam desk any 'notes or other materials'. Regulation 7(a) stated that if the student was in breach of this provision:

... and the 'unauthorised materials' are relevant to the syllabus being examined, it will be assumed that you intended to use them 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 materials to gain an unfair advantage in the exam.
6. The material found at Miss Gu's desk consisted of two small sheets about the size of a pocket diary, closely written on three of the four sides with notes and formulae. ACCA obtained an 'examiner's irregular script report' from a person who was not identified. This stated that the material was relevant to the syllabus and relevant to the particular exam. The examiner's report was inconclusive as to whether the notes had actually been used in answering the exam questions. Immediately after the exam Miss Gu completed a form (SCRS 2B), in which she had written that the notes were 'not actually' relevant to the syllabus. However, at the hearing she told the

Committee that she hadn't understood the question on the form at the time. During the investigation she had accepted that they were relevant. At the hearing, she said that they were study materials specifically created for this exam.

7. The Committee was satisfied that the notes were relevant to the syllabus. Therefore, there was a burden of proof on Miss Gu to show that she did not intend to use them to gain an unfair advantage.
8. The evidence of the invigilators was mainly set out in the 'unauthorised material' form filled in immediately after the exam. Person B stated that the papers were found under Miss Gu's keyboard: 'when I was walking around in examination the student take the materials from the keyboard ... I said that I saw her cheating and wanted to confiscate the evidence'. Person A also completed the form but did not observe the discovery of the papers.
9. In Miss Gu's evidence to the Committee, she said that she had prepared the notes a long time before the exam as study aids. They were small so she could carry them with her, and consult them when travelling. Her parents drove her to the exam centre, but because of heavy traffic they were delayed. She was revising from the notes on the journey. Miss Gu was in a rush when she arrived. She thought that she must have put the notes in her pocket with the official exam documents by mistake instead of leaving them outside. She took the official document out to register and left it on her desk as she was meant to. During the exam she realised that there was still something in her pocket. She said that to avoid being suspected of cheating she took the notes out and put them on her desk, next to the official document. She said the notes were openly on display but she did not call the invigilator. She was unable to recall how long the notes remained on her desk before they were seen by the invigilator. She said that she had no intention to use them, and did not use them.
10. Miss Gu was asked about the (undated) case management form she completed shortly before the hearing. In that document, she had said the papers were 'between my ID card and desk so that I didn't notice it'. After a long pause Miss Gu said that by 'between' she meant 'left and right' rather than 'above and below'. She was asked why she said, in that form, that she

had not noticed the notes on the desk, whereas in evidence, she said that she had deliberately placed them on the desk. She said that she used a translation app when she was writing the answer. What she was trying to say was that she had not noticed that the notes were in her pocket. She said that she was trying to say that the notes were not under the keyboard.

11. The Committee recognised that there were considerable language difficulties in this case. Miss Gu's knowledge of English was limited, as demonstrated by her written communications. During the hearing she gave evidence entirely in Mandarin, so she should have been able to express herself freely and naturally, but the Committee recognised that the process of translating questions and answers can contribute to an apparent lack of clarity.
12. Even allowing for all this, the Committee found Miss Gu's evidence to be unsatisfactory. If her intention had been to be open about mistakenly bringing notes into the exam, one would expect her to have spoken to an invigilator, rather than take the papers from her pocket, and leave them on the desk.
13. Person B's evidence was clear that the notes had been hidden under the keyboard before they were found. Miss Gu had asked for Person B to be present to be cross-examined, but her request was not made until the case management form was returned. Ms Cawley-Wilkinson said that Person B was willing to give evidence, but was not available today. Miss Gu did not object to the case continuing without Person B being present. The Committee allowed for the fact that Person B's evidence had not been tested by cross-examination. Miss Gu was unable to suggest to the Committee any reason why Person B would have got it wrong.
14. In the case management form, Miss Gu said, in effect, that the notes were hidden under her ID card. In her evidence today, she said they were openly on display. The Committee did not consider that the inconsistency could be explained by language difficulties. Furthermore, the Committee received a testimonial from Person C who had taught Miss Gu at university. He set out what he said he had been told by Miss Gu about the incident. He said that she had told him that she had put the notes under her ID card. The

Committee found Miss Gu's evidence about the circumstances in which the notes came to be on her desk to be inconsistent and unreliable.

15. The Committee took into account that the notes were in a form which suggested that they were designed to be concealed. The Committee found, on the balance of probabilities, that they were concealed. They were nevertheless on the desk where they could be referred to. The obvious inference was that Miss Gu intended to cheat. The Committee was not persuaded by Miss Gu's evidence to the contrary. **The Committee found Allegation 1(b) proved.**
16. Having found that Miss Gu brought unauthorised materials into an exam intending to use them to gain an unfair advantage, the Committee had no doubt that she was guilty of dishonesty. Cheating in an exam is clearly dishonest. For the same reason her actions were contrary to the Fundamental Principle of Integrity. **The Committee found Allegation 1(c) proved.**
17. The Committee considered that Miss Gu's actions amounted to misconduct. Cheating in an exam is one of the clearest and most serious breaches of the professional standards applicable to an ACCA student. The Committee therefore did not need to consider Allegation 1(d)(ii). **The Committee found Allegation 1(d)(i) proved.**

SANCTION(S) AND REASONS

18. Having found the facts proved, the Committee considered what sanction, if any, to impose having regard to ACCA's Guidance for disciplinary sanctions.
19. The Committee first identified any aggravating or mitigating factors. Cheating, or attempting to cheat, in an exam is always a serious matter, but the Committee did not identify any factor which made this case more serious than others of its kind. Miss Gu had denied the allegations throughout and given evidence which the Committee did not accept. However, the nature and extent of the attempt to cheat in this case was, perhaps, less serious than in many such cases.

20. As to mitigating factors, this was an isolated incident. Miss Gu had cooperated with the investigation. She admitted possessing the documents in question. Because she had denied the full extent of the allegations, it made it difficult for her to demonstrate complete insight. However, after the findings had been announced, Miss Gu told the Committee that she accepted the mistakes she had made. She regretted very much what she had done, and realised the seriousness of it. She recognised that her actions could have a bad impact on other students who had worked hard to pass their exams. She said that she had learnt her lesson, and expressed the hope that ACCA could give her another chance to continue her studies. The Committee accepted Miss Gu's sincerity, and considered that she was genuinely contrite, and was developing insight. The Committee also took into account that Miss Gu was at a very early stage in her career. She was only 19 years old at the time of the exam. Her misconduct may be partly attributable to immaturity. The Committee was satisfied that it would never be repeated.
21. The Committee was satisfied that it was necessary to impose a sanction because of the seriousness of the matters found proved. The Committee considered the available sanctions in increasing order of seriousness.
22. The Committee first considered the sanction of admonishment. Few, if any, of the factors in the Guidance relating to admonishment were present in this case.
23. The Guidance states that the sanction of reprimand would usually be applied in situations where the conduct is of a minor nature. The Committee did not consider the misconduct in this case to be a minor matter. Cheating, or attempting to cheat, in exams is extremely serious.
24. In relation to the sanction of severe reprimand, the Committee went through the specific factors referred to in the Guidance. The Committee found that the misconduct was intentional, but it accepted that it was an isolated incident that would not be repeated. The misconduct had the potential to cause indirect harm in that cheating, or attempting to cheat, can discredit the examination system, and is unfair to the vast majority of students who abide by the Examination Regulations. The Committee accepted that Miss Gu had

developing insight, she was genuinely remorseful, and had a previous good record. There had been no repetition of misconduct. Corrective steps were not appropriate, but the Committee was satisfied that Miss Gu would not repeat her actions. Miss Gu submitted supportive references which spoke highly of her as an accountancy student. Miss Gu cooperated with the investigation.

25. The Committee has found that Miss Gu was in possession of unauthorised material at her desk during an exam with the intention to gain an unfair advantage. In this respect she was dishonest. The Committee considered carefully whether Miss Gu's behaviour was fundamentally incompatible with being a registered student. In most cases of cheating, or attempting to cheat, the minimum sanction that could be imposed would be removal from the student register. After careful consideration of the mitigating factors, the Committee decided that, exceptionally, a sanction of severe reprimand would be sufficient in this case.

COSTS AND REASONS

26. Ms Cawley-Wilkinson applied for costs of £6,555.73.
27. The Committee was satisfied that the case had been properly brought and that, in principle, ACCA was entitled to an order for costs.
28. As to the amount, the Committee was satisfied that the sums claimed were reasonable in relation to the time spent.
29. The Committee considered Miss Gu's ability to pay a costs order. Miss Gu is a student. She had submitted a statement of means [Private]. The Committee heard evidence that the average annual salary in China was about 30,000 Chinese Yuan or about £3,500. It would clearly be impossible for her to pay more than a fraction of the amount claimed. The Committee determined that Miss Gu should make a contribution to ACCA's costs of £1,000.

ORDER

30. The Committee ordered as follows:

- (a) Miss Gu will be severely reprimanded.
- (b) Miss Gu is disqualified from the F7 examination taken on 5 June 2018.
- (c) Miss Gu will make a contribution to ACCA's costs of £1,000.

ACCA POLICY ON COSTS

- 31. A disciplinary order has now been imposed against Miss Gu as a student of ACCA. She will be receiving an invoice from ACCA soon after the appeal period has expired, and this will be due for immediate payment. ACCA works with a third party legal firm to chase debts owed, and they will be instructed to contact Miss Gu if payment is not received, which could result in legal action.
- 32. In the event that Miss Gu fails to pay the costs owed to ACCA within 3 months from the date of the invoice, ACCA will administratively remove her from the register of students.

Dr Jonathan Page
Chairman
7 August 2019