

## HEARING

### DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

#### REASONS FOR DECISION

<b>In the matter of:</b>	Miss Huijiao Ru
<b>Heard on:</b>	Wednesday, 21 August 2019
<b>Location:</b>	ACCA's Offices, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU
<b>Committee:</b>	Mr James Kellock (Chairman), Ms Joanne Royden-Turner (Accountant) and Mr Grahame Owen (Lay Member)
<b>Legal Adviser:</b>	Mr Richard Ferry-Swainson
<b>Persons present and capacity:</b>	Ms Sarah Cawley-Wilkinson (ACCA Case Presenter and Miss Rachael Davies (Hearings Officer)
<b>Observers:</b>	None
<b>Outcome:</b>	<b>Allegations 1(a), 1(b)(in part), 1(c)(ii), 1(d) (i), 2(a)(i) to (iii) and 2(b)(i) found proved. Student removed and costs of £6,500 ordered.</b>

## **INTRODUCTION/SERVICE OF PAPERS**

1. The Disciplinary Committee (“the Committee”) convened to consider an Allegation against Miss Ru, who did not attend and was not represented.
2. The papers before the Committee were in a bundle, numbered 1 to 150, plus an additional bundle, numbered 1 to 6, and a costs schedule, numbered 1 to 5. There was a service bundle, numbered 1 to 20.
3. Ms Cawley-Wilkinson made an application to proceed in the absence of Miss Ru.

## **PROCEEDING IN ABSENCE**

4. The Committee first considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (“the Regulations”). The Committee took into account the submissions made by Ms Cawley-Wilkinson on behalf of ACCA, and also took into account the advice of the Legal Adviser.
5. Included within the service bundle was the Notice of Hearing dated 18 July 2019, thereby satisfying the 28 day notice requirement, and sent by email to Miss Ru at her email address, as it appears in the ACCA register. There is a receipt confirming the email was received by Miss Ru’s email account. The Notice included details about the time, date and venue for the hearing and also, Miss Ru’s right to attend the hearing in person or on the phone, and to be represented, if she so wished. In addition, the Notice provided details about applying for an adjournment, and the Committee’s power to proceed in Miss Ru’s absence, if considered appropriate.
6. The Committee was satisfied that the Notice had been served in accordance with the Regulations. Having so determined, the Committee then considered whether to proceed in Miss Ru’s absence. The Committee bore in mind that although it had a discretion to proceed in the absence of Miss Ru, it should

exercise that discretion with the utmost care and caution, particularly as Miss Ru was unrepresented.

7. The Committee noted that Miss Ru faced serious allegations of dishonesty and failing to co-operate with ACCA investigations' department, and that there was a clear public interest in the matter being dealt with expeditiously. The Committee considered an adjournment would serve no useful purpose, because it seemed unlikely that Miss Ru, who was not engaging with ACCA, would attend on any other occasion. The Committee noted she had not responded to any of the correspondence sent by ACCA, either during the investigation or about this hearing, and concluded that she had thereby waived her right to be present and to be represented at this hearing.
8. In all the circumstances, the Committee decided that it was in the interests of justice that the matter should proceed, notwithstanding the absence of Miss Ru.

#### **APPLICATION TO AMEND**

9. Ms Cawley-Wilkinson made an application to amend the allegations. She submitted that the amendments were minor in nature and only consisted of adding the word "or" in two places. She submitted that the change to 1(b) was to reflect what was clear in the report, that the case was being put on an either/or basis. The addition to 2(a), she submitted, was simply an error and did not prejudice Miss Ru, who had been notified of the proposed amendments by email on 16 August 2019. Miss Ru did not respond to that email.
10. The Committee heard and accepted the Legal Adviser's advice, and was content to allow the proposed amendments. The first amendment did, in the Committee's view, change the way in which the matter was alleged in that it made it easier for ACCA to prove 1(b), in the event that the Committee did not find both limbs of that allegation proved. However, the Committee was content to allow this amendment because there was no evidence that it would prejudice Miss Ru in her defence, since the report had referred to this

approach by ACCA. The Committee noted that Miss Ru had been notified of the proposed change, had not objected to it and indeed had chosen not to engage with these proceedings. The second amendment was clearly simply a typographical error, and to allow it would cause no injustice.

## **ALLEGATIONS/BRIEF BACKGROUND**

11. It is alleged that Miss Ru is liable to disciplinary action on the basis of the following Allegations (as amended):

### **Allegation 1**

1. During an F4 (ENG) Corporate and Business Law computer based exam (CBE) on 04 November 2017:

(a) Miss RU Huijiao was in possession of and used a device capable of taking photographs during the course of the exam.

(b) Miss Ru Huijiao caused images of exam questions to be made using the device referred to at 1(a) above and/or caused or permitted the said images to be shared on the following platforms:

(i) Taobao Marketplace.

(c) Miss RU Huijiao's conduct in respect of any or all of the matters set out at 1(a) and/or 1(b) above was:

(i) Dishonest in that she shared the images to assist another/ other exam entrants to gain an unfair advantage; or in the alternative

(ii) Contrary to the fundamental principle of integrity (as applicable in 2017) in that such conduct demonstrates a failure to be straightforward and honest

(d) By reason of her conduct Miss RU Huijiao is:

- (i) Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of 1(a) and/or 1(b) and/or 1(c) above.

**Allegation 2**

2. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Miss RU Huijiao has failed to co-operate fully with the investigation of a complaint in that:

(a) She failed to respond at all to any or to all of ACCA's correspondence dated:

- (i) 20 December 2018;
- (ii) 21 January 2019; and
- (iii) 14 February 2019.

(b) By reason of her conduct in respect of any or all of the matters set out at 2(a) above, Miss RU Huijiao is:

- (i) Guilty of misconduct, pursuant to bye-law 8(a)(i);
- (ii) Liable to disciplinary action, pursuant to bye-law 8(a)(iii).

- 12. Miss Ru registered as an ACCA student on 9 November 2015.
- 13. On 11 December 2018, ACCA China notified ACCA Investigations that F4 CBE questions were being offered for sale on the internet Taobao Marketplace. Person A, a local ACCA contact, made a test purchase on Taobao Marketplace. After the transaction went through on Taobao Marketplace, the seller on Taobao contacted Person A, and supplied him with access to the F3 and F4 CBE questions on Baiduyun – a cloud storage service. Person A passed this information on to ACCA and took no further part in the investigation.

14. The contents of a folder “第一套 1.19” were downloaded by an Investigations Officer and forwarded to Mr Mackenzie, ACCA’s CBE Delivery Manager, to review.
15. Folder “第一套 1.19” contained sixty jpg image files, which appeared to show questions from a computer based examination; these were shared with Mr Mackenzie, who reviewed a sample of these files.
16. In his statement, Mr Mackenzie explains:
  - a. The student’s ACCA registration number is at the top of the screens which enabled the student to be identified;
  - b. This also meant that the licensed on-demand centres could be identified, as ACCA’s internal databases enables the location of all centres at which students attempt their exams to be identified;
  - c. The header also shows the CBE exam sat was F4(ENG) Corporate and Business Law;
  - d. The student registration number at the top of Exhibit IM-1a is 3561563. This is the ACCA registration number of: Miss Ru;
  - e. He reviewed ACCA’s internal database which shows that Miss Ru sat the F4 (ENG) Corporate and Business Law on one occasion, namely 4 November 2017;
  - f. He reviewed a selection of the questions: Section A, question 2, Section A and question 14, Section A, question 34 and Section B, question 50 from folder “第一套 1.19.” against the F4 exam records of Miss Ru and confirms that these were some of the questions Miss Ru was required to answer in her F4 CBE exam on 4 November 2017.

17. ACCA initially wrote to Miss Ru at her registered postal address on 20 December 2018, asking her for her comments and observations in regards to this investigation. Miss Ru was asked to respond by 18 January 2019. ACCA's letter was also e-mailed to her on the same day to her registered e-mail address. The addresses the initial letter was sent to matched Miss Ru's registered addresses, as they appeared in ACCA's member's databases on 20 December 2018.
18. ACCA did not receive a response from Miss Ru. A chaser letter was sent to her on 21 January 2019, to her registered postal address and her registered e-mail address. Miss Ru was also warned that an additional allegation of failure to co-operate may be brought against her if she did not respond to this chaser by 11 February 2019. The addresses the chaser correspondence was sent to matched Miss Ru's registered postal and e-mail addresses, as they appeared in ACCA's member's databases on 21 January 2019.
19. ACCA did not receive a response from Miss Ru. A final chaser letter was sent to Miss Ru on 14 February 2019 to her registered postal address and her registered e-mail address. Miss Ru was again warned that an additional allegation of failure to co-operate may be brought against her if she did not respond to this chaser by 28 February 2019. The addresses the chaser correspondence was sent to matched Miss Ru's registered postal and e-mail addresses, as they appeared in ACCA's member's databases on 14 February 2019.
20. Miss Ru has not engaged with ACCA at any stage, nor did she attend the hearing. Consequently there was nothing from her that the Committee could consider.

## **DECISION ON FACTS/ALLEGATIONS AND REASONS**

21. The Committee considered, with care, all the evidence presented and the submissions made by Ms Cawley-Wilkinson. The Committee accepted the advice of the Legal Adviser.

### **Allegation 1(a) - proved**

22. The Committee was satisfied that, on the evidence of photographic images linked to Miss Ru by her individual identification number, she must have had some form of camera with her when sitting the CBE exam. Whether that was a smart phone with a built in camera or some other device, the Committee was satisfied, on the balance of probabilities, that she was both in possession of and used a device capable of taking photographs, during the course of the exam. The Committee therefore found 1(a) proved.

### **Allegation 1(b) - proved in part**

23. It follows from the Committee's decision in relation to 1(a), that it was satisfied Miss Ru caused images of exam questions to be made. To that extent, therefore, Allegation 1(b) is proved. However, the Committee was not satisfied, on the balance of probabilities, that Miss Ru caused or permitted those images to be shared on the Taobao Marketplace. There was no evidence before the Committee about how those images got onto the Marketplace and there could have been alternative plausible explanations. The Committee considered that there was not a strong connection between the taking of the photographs and the selling of them on the internet, and that there could be other reasons why Miss Ru took the photos.
24. Ms Cawley-Wilkinson referred the Committee to the case of *Kuzmin v GMC [2019] EWHC 2129 (Admin)* and invited the Committee to draw an adverse inference from Miss Ru's silence. The Committee, however, was not persuaded to do so. It noted that in the Kuzmin case, the doctor in question did attend the hearing and had made a statement, but then decided to



withdraw the statement and not answer questions. That was quite different from this case where Miss Ru had not attended or provided any material for the Committee to consider. Furthermore, the Kuzmin case made it clear that, before drawing an adverse inference, the Committee would need to be satisfied that the person in question had been warned that an adverse inference could be drawn from their silence and what that meant. The Committee was not persuaded that this pre-requisite had been met by the sentence in the Notice of hearing letter, referred to by Ms Cawley-Wilkinson. That sentence made reference to a failing to attend having the potential to seriously prejudice a member's position, but made no reference to adverse inferences being drawn from silence.

**Allegation 1(c)(i) - not proved**

25. The Committee decided that ACCA had not proved enough to show that Miss Ru had been dishonest in the way alleged. The Committee had not found that she had caused or permitted the images to be shared on the Taobao Marketplace. She may have shared them elsewhere, but there was not sufficient evidence to prove that, if she did, it was to assist exam entrants to gain an unfair advantage. The Committee considered the photographs could have been taken by Miss Ru for an innocent reason. The Committee therefore found 1(c)(i) not proved.

**Allegation 1(c)(ii) - proved**

26. The Committee did consider the photographing of exam questions to be contrary to the fundamental principle of integrity. The Committee was satisfied, on the balance of probabilities, that Miss Ru would have been aware, having sat a number of ACCA exams, that it was not permissible to take the exam paper away from the exam. Whilst ACCA conceded that the taking of photographs is not explicitly banned in the exam regulations, it is fair to conclude that taking photos of questions is equivalent to removing the exam paper from the room, and to do so is not behaving in a straightforward way.

**Allegation 1(d)(i) - proved**

27. Having found the facts proved in Allegations 1(a), 1(b) (in part) and 1(c)(ii), the Committee then considered whether they amounted to misconduct. The Committee had found that taking the photographs was contrary to a fundamental principle, namely that of integrity. The Committee considered that fellow members of the profession would find such behaviour deplorable. It was behaviour which brought discredit upon Miss Ru, the profession and ACCA, and it did amount to misconduct.

**Allegation 2(a)(i) to (iii) - proved**

28. The Committee was advised by the Legal Adviser that the duty to co-operate with an ACCA investigation is absolute, that is to say every relevant person is under a duty to co-operate with any investigating officer and any assessor, in relation to the consideration and investigation of any complaint. A failure, or partial failure, to co-operate fully with the consideration or investigation of a complaint shall constitute a breach of the regulations, and may render the relevant person liable to disciplinary action. Miss Ru failed to respond to any of the correspondence sent to her by the Investigations Officer on the three dates specified. The Committee was informed that the second letter was returned to ACCA as undelivered. The Committee noted, however, that the correspondence was also sent by email to the email address provided by Miss Ru, and there was no evidence that any of those emails had not been successfully delivered. The Committee therefore found Allegation 2(a)(i) to (iii) proved.

**Allegation 2(b) - proved**

29. Having found the facts proved in Allegations 2(a)(i) to (iii), the Committee then considered whether they amounted to misconduct. The Committee was of the view that Miss Ru's failure to co-operate fully, or indeed at all, with an investigation being carried out by her regulator into her alleged misconduct, is a serious matter. A student member should not be able to frustrate, delay, or derail, completely, an investigation into their conduct. Being a student

member of ACCA brings with it a duty to co-operate, both in relation to compliance with the Regulations and into the investigation of a complaint. The Committee was in no doubt that such behaviour represented a serious falling short of professional standards, and brought discredit upon Miss Ru and also upon the profession and ACCA as regulator. It therefore decided that Miss Ru's behaviour in failing to co-operate amounted to misconduct, and that Allegation 2(b)(i) was proved in relation to Allegation 2(a)(i) to (iii).

30. Having found Allegation 2(b)(i) proved, it was not necessary for the Committee to consider Allegation 2(b)(ii), which was in the alternative.

#### **SANCTION AND REASONS**

31. In reaching its decision on sanction, the Committee took into account the submissions made by Ms Cawley-Wilkinson. Miss Ru had not attended or provided any personal mitigation for the Committee to take into account. 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 Miss Ru, but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct, and that any sanction must be proportionate. The Committee accepted the advice of the Legal Adviser.
32. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.
33. The Committee considered the following aggravating feature: a repetition of the failure to co-operate.
34. The Committee considered the following mitigating factor: no previous disciplinary matters recorded against her.
35. The Committee did not think it appropriate to take no further action in a case where it had found misconduct on two separate grounds, one of which included a breach of the fundamental principle of integrity, and the other a

failure to co-operate with the regulator. The Committee considered it would not be in the public interest to take no further action in a case where a student member had acted in this way. A failure to co-operate with a disciplinary investigation is considered to be “*very serious*” in the sanctions guidance.

36. The Committee next considered an admonishment. However, the Committee considered the breach of the fundamental principle of integrity and the failure to co-operate to be too serious to be concluded with an admonishment, particularly where the behaviour was deliberate, not isolated, and there was no evidence of insight, remorse or remediation. The Committee therefore decided that an admonishment was not a sufficient sanction in all the circumstances of this case.
37. The Committee then considered whether to reprimand Miss Ru. The guidance indicates that a reprimand would be appropriate in cases where the conduct is of a minor nature, there appears to be no continuing risk to the public, and there has been sufficient evidence of an individual’s understanding, together with genuine insight into the conduct found proved. However, the Committee did not consider Miss Ru’s conduct to be of a minor nature, and there was no evidence of any insight. Accordingly, the Committee concluded that a reprimand would not adequately reflect the seriousness of the conduct.
38. The Committee then considered whether a severe reprimand would adequately reflect the seriousness of the case. The guidance indicates that such a sanction would usually be applied in situations where the conduct is of a serious nature, but where 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. The Committee considered none of these criteria to be met. The guidance adds that this sanction may be appropriate where most of the following factors are present:

- the misconduct was not intentional and no longer continuing;
- evidence that the conduct would not have caused direct or indirect harm;
- insight into failings;
- genuine expression of regret/apologies;
- previous good record;
- no repetition of failure/conduct since the matters alleged;
- rehabilitative/corrective steps taken to cure the conduct and ensure future errors do not occur;
- relevant and appropriate references;
- co-operation during the investigation stage.

39. The Committee considered that, apart from a previous good record, none of these factors were present in this case, and that a severe reprimand was therefore not a sufficient and proportionate sanction to mark the seriousness of Miss Ru's conduct, and to uphold standards and maintain confidence in the profession.

40. Having considered all the options available from the least serious upwards the Committee concluded that the only appropriate and proportionate sanction was removal from the student register. In particular failing to co-operate with the regulator, and breaching the fundamental principle of integrity whilst demonstrating no insight, no remorse and no remediation, was so serious a breach of bye-law 8, that no other sanction would adequately reflect the gravity of her offending behaviour.

41. The Committee also considered that a failure to remove, from the register, a student who had behaved in this way and provided nothing by way of mitigation, would seriously undermine public confidence in the profession and in ACCA as its regulator. In order to maintain public confidence and uphold proper standards in the profession, it was necessary to send out a clear message that this sort of behaviour would not be tolerated.

42. The Committee therefore ordered that Miss Ru be removed from the student register.

### **COSTS AND REASONS**

43. ACCA applied for costs in the sum of £7,444.90. The Committee was provided with a schedule of costs. The Committee was satisfied that the costs claimed were appropriate and reasonable, except for the time estimates for the Case Presenter and Hearings Officer for today's hearing which, in the event, took less than a full day and also to reflect the inefficiency in having to amend the allegations on three separate occasions. Miss Ru did not provide any details of her means or provide any representations about the costs requested by ACCA, there was therefore no evidential basis upon which the Committee could make any reduction on that ground.
44. In light of its observations above, the Committee reduced the amount requested to reflect the actual costs more likely to have been incurred and made an order in the sum of £6,500.

### **EFFECTIVE DATE OF ORDER**

45. This order will have effect at the expiry of the appeal period, or at the conclusion of any appeal if one is made. The Committee was not persuaded that it was necessary to direct that the order have immediate effect in order to protect the public.

**Mr James Kellock**  
**Chairman**  
**21 August 2019**