

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Chen Yiyun

Heard on: Thursday, 18 July 2019

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

Committee: HH Suzan Matthews QC (Chairman), Mr Trevor Salmon (Accountant), Mr Michael Lamb (Lay)

Legal Adviser: Mr Andrew Granville Stafford

Persons present

and capacity: Mr Benjamin Jowett (ACCA Case Presenter)
Mr Richard Lorkin (Hearings Officer)

Observers: None

Summary: **Allegations 1(a), 1(b), 1(c)(i) and 1(d) proved**
Removal from the student register
Costs of £7,000

PRELIMINARY

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Miss Chen. Miss Chen is a student member of ACCA, having been admitted to student membership on 9 December 2016, and is resident in China.
2. The Committee had before it a bundle of papers (pages 1 to 140), and two service bundles (pages 1 to 33 and 34).
3. Miss Chen did not attend the hearing and was not represented.

PROCEEDING IN ABSENCE

4. The Committee considered the service bundle which contained a Notice of Hearing and a print out of Miss Chen's postal and email addresses. The notice was sent by Royal Mail International Tracked and Signed post to Miss Chen at her registered address on 11 June 2019. A copy of the Notice of Hearing was also sent to Miss Chen by email the same day.
5. There had been no response to the notice from Miss Chen, although the service bundle contained confirmation that emails sent by ACCA to her, have been delivered. The Hearings Officer had also tried telephoning Miss Chen at the number she provided to ACCA on two occasions, but without success.
6. The Committee was satisfied that the requirements of regulations 10(1) and 22(1) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ('CDR') as to service had been complied with.
7. Having satisfied itself that service had been effected in accordance with the rules, the Committee went on consider whether to proceed in the absence of Miss Chen. The Committee bore in mind that the discretion to do so must be exercised with care, and in light of the public interest in dealing with matters such as this fairly, economically and expeditiously.
8. Miss Chen has not engaged for a period of seven months, since the matter was referred to the independent assessor. The Committee was satisfied that, given the notices and correspondence sent to her by email and post, and given the attempts made to contact her by telephone, Miss Chen was

aware of these proceedings. She had been offered the opportunity to take part by video or telephone link and the assistance of an interpreter but had not responded to those offers.

9. The Committee therefore reached the conclusion that she had made a deliberate decision not to engage. In the circumstances no useful purpose would be served by adjourning this hearing.
10. The Committee determined that, in the interests of justice, the hearing should proceed in Miss Chen's absence.

ALLEGATIONS AND BRIEF BACKGROUND

11. The allegations against Miss Chen was as follows:
 1. During an F4 (ENG) Corporate and Business Law computer based exam (CBE) on 14 January 2018:
 - a. Miss Chen Yiyun used and/or was in possession of a device capable of taking photographs which she had at or on her desk.
 - b. Miss Chen Yiyun caused and/or permitted an image or images of exam questions to be made using the device referred to at 1a above and/or shared, the said image or images on Baidu Netdisk;
 - c. Miss Chen Yiyun'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 intended 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 2018) in that such conduct demonstrates a failure to be straightforward and honest
 - d. By reason of her conduct Miss Chen Yiyun 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

12. Miss Chen is a student member of ACCA, having been admitted to student membership on 9 December 2016, and is resident in China. On 14 January 2018, Miss Chen attended the Lanzhou ZBG exam centre and sat the F4 Corporate and Business Law exam. This was a computer based exam (CBE).
13. Students contact on-demand CBE centres directly in order to book their exams. Fees are paid directly to the exam centre and the student is sent a copy of a student information sheet at the time of booking.
14. The student information sheet includes the Exam Regulations which include the following:

Examination Regulation 5

You are not allowed to take to your exam desk any books, notes or other materials except those authorised by the registrar. These are known as “unauthorised materials.”

Examination Regulation 6

You are not allowed to possess any unauthorised materials while the exam is in progress (whether at your desk or otherwise).

Exam Regulation 7

. . . You are not permitted to use or have on or at your desk a mobile phone, tablet, pager, etc, of any kind. These are known as ‘unauthorised items’.

Exam Regulation 10

You may not assist, attempt to assist, obtain or attempt to obtain assistance by improper means from any other person during your exams.

Exam Regulation 14

You are not permitted to remove either your candidate answer booklet(s) or your question paper from the exam hall.

15. On arrival at the centre, the student reports to the examinations coordinator or administrator and presents a copy of their photo ID for checking. Once this has been done, the invigilator reads out the invigilator announcements and carries out checks of the students' IDs.
16. Students then log in to the Examiner software, entering their student registration number and date of birth. The invigilator must ensure that the student's photo ID and the details entered into the Examiner software match, and that the correct exam is available for selection. Provided all details are correct, the students select the exam, confirm details are correct and click 'Continue'.
17. Once students have finished their exam, they click 'Exit', and their result is displayed.
18. On 23 July 2018, ACCA received an email from an individual, who asked to remain anonymous (Person A). Person A said he had found questions for ACCA's F4 Corporate and Business Law computer based exam on the internet. Person A supplied ACCA with a link to the Baidu Netdisk website (a China based shared cloud data storage) where he found the CBE questions. He attached a sample of fourteen pictures from the Baidu Netdisk web link.
19. Person B, ACCA's CBE Delivery Manager, says that ACCA's Investigations Department was able to access the Baidu Netdisk weblink. In it was a folder labelled F4 第8套 (the F4 folder). This folder contained 50 photographic images (jpg files) which included images of ACCA exam questions.
20. ACCA's case is that 41 of the images in the F4 folder (with file names from 题目11.jpg to 题目50.2.jpg) were taken by Miss Chen when she sat the F4 examination.

21. The header in these jpg images included a student registration number and identifies the exam that was sat. The registration number is [Private], which is Miss Chen's number, and the exam centre is the centre where Miss Chen sat the F4 exam in January 2018.
22. Person B has examined a sample of the images (file names 题目12.jpg, 题目20.jpg, 题目35.jpg, 题目42.jpg, 题目50.jpg and 题目50-2.jpg). He confirms that these six images were of questions from F4 exam that Miss Chen sat in January 2018. He is able to confirm this because questions for the exam are selected from a pool and the order they appear on any particular sitting is randomised.
23. ACCA wrote to Miss Chen on 12 September 2018, enclosing a sample of the F4 CBE question images found in the Baidu Netdisk web link with her ACCA ID number and invited her to provide her comments.
24. In her response on 19 September 2018, Miss Chen denied she took the pictures and states the following:

'I feel shocked about what you said in the letter and I do not know why Baidu Netdisk contains pictures of my exam questions. When I took my exams, I did not take any electronic products as exam disciplines claimed. I handed in all my books, mobile phone and watch monitored by examier and the examier (sic) may provide evidence for me. Therefore, I do not have devices to take pictures. Moreover, exam time is tight for me so I do not have time to take pictures.

When I took F4 exam, I remembered a student was criticized for using a mobile phone. I finished my exam and I leaved exam room at once so I did not know what happened next and why she used her mobile.

Today I might suspect that some students may take pictures while taking ACCA's CBE and share these pictures with others. Unfortunately, the pictures of my questions might be taken, as well as my registration number.

All in all, I feel upset about what you told me in the letter. I do follow exam disciplines and I even do not tell anyone about the questions of exams. I hope this terrible event will not effect my study and exams. Meanwhile, I wish ACCA Investingations (sic) can find out the truth of the event.

25. In a further message sent to ACCA on 1 January 2019, following notification that these allegations had been referred to the independent assessor, Miss Chen said:

‘a. I handed in electronic devices and paper materials during the examination under the supervision of the invigilator. I did not use or be in possession of an unauthorised item.

b. I did not know why my exam papers were photoed. I did not have any high-tech devices to take photos under strict invigilation. I looked at the pictures in the document. They were indeed pictures of my exam papers, but they were not taken by me. I didn't write the answers attached to the document. But it was the answer to my question. I did not know why this happened. However, I don't think it's difficult for someone who can take pictures of my papers to get the answers to my questions and write them down.

c. I don't know why my test paper and my answer will be on Baidu. My Baidu account number is "goodbye to my impulse (再见我的冲动)" (the account binds my mobile phone number: 18217251135). Maybe someone got my test papers and answers through some high-tech means, and concurrently on Baidu. But I didn't do these things. I just went to take a good exam.

d. I don't think these pictures can show that I took them or that I shared them with others.’

26. Miss Chen did not complete and return her case management form, and ACCA had heard nothing further from her subsequent to this email on 1 January 2019.

DECISIONS ON ALLEGATIONS AND REASONS

27. The Committee considered the documents before it, the submissions of Mr Jowett on behalf of ACCA and the advice of the Legal Adviser. The Committee bore in mind that the burden of proving an allegation rests on ACCA, and the standard to be applied is proof on the balance of probabilities.

Allegation 1(a) and 1(b)

28. The Committee was satisfied that the images were from Miss Chen's F4 exam. The fact that her candidate ID number is on the images, and the questions match those asked in the particular F4 exam she sat in January 2019, lead inevitably to this conclusion. Indeed, Miss Chen herself accepts the images are of her exam paper.
29. Someone made photographic images of Miss Chen's exam questions. The issue for the Committee was whether it was Miss Chen or someone else, unknown to her, who had done so. The overwhelming inference is that this must have been Miss Chen. It was not reasonably conceivable that anyone else could have taken them without her knowledge. Therefore, on the balance of probabilities the Committee found that Miss Chen did make these images and, it follows, she must have been in possession of a device in the exam which was capable of taking photographs.
30. The Committee carefully considered Miss Chen's accounts given to ACCA. However, it did not accept as plausible her allegation that someone else must have been responsible for photographing her exam questions.
31. Having found that Miss Chen made the images, the only reasonable conclusion was that she was responsible for sharing the images on Baidu Netdisk.
32. The Committee found Allegations 1(a) and 1(b) proved.

Allegation 1(c)(i)

33. In light of the above findings the Committee was satisfied that Miss Chen's conduct in respect of Allegations 1(a) and 1(b) were dishonest. The Committee was satisfied that taking a photographic device into an exam room and recording images of exam questions in order to share them with

others would be regarded as dishonest by ordinary and reasonable members of the public.

34. The Committee therefore found Allegation 1(c)(i) proved.

Allegation 1(c)(ii)

35. As the Committee found Allegation 1(c)(i) proved, there was no need for it to consider the alternative allegation that she had breached the Fundamental Principle of Integrity.

Allegation 1(d)

36. These actions bring discredit to Miss Chen and would be regarded as deplorable by members of the profession. The Committee's concluded that her conduct was dishonest. There was no doubt in the Committee's mind that, having found Allegations 1(a), 1(b) and 1(c) proved, this conduct amounted to misconduct.
37. Allegation 1(d) is found proved.

SANCTION AND REASONS

38. The Committee considered what sanction, if any, to impose taking into account ACCA's Guidance for Disciplinary Sanctions and the principle of proportionality. The Committee bore in mind that the purpose of sanctions was not punitive, but to protect the public, maintain confidence in the profession, and declare and uphold proper standards of conduct and behaviour. Having found that Miss Chen's actions amounted to misconduct, taking no further action was clearly not appropriate. The Committee therefore considered the available sanctions in ascending order.
39. The Committee took into account that no previous findings had been made against Miss Chen. She had initially engaged with the investigation, although she had made no admissions, and she had not taken part in the hearing. In the circumstances she had shown neither insight nor remorse.
40. Miss Chen's actions were not only a very serious departure from proper and acceptable standards but, given she was clearly aware of the exam regulations, must have been deliberate. Furthermore, Miss Chen's actions were dishonest. This misconduct was at the upper end of the scale. It would

be inappropriate, given the nature of the behaviour in question, to admonish, reprimand or severely reprimand.

41. The Committee concluded that Miss Chen's actions in this case were fundamentally incompatible with being a student member of a professional association. They put the public at risk, in that they potentially allow students to pass professional exams they might otherwise fail, and undermine confidence in the profession. The Committee did not feel that any order which allowed Miss Chen to retain her student membership of ACCA could possibly be justified.
42. Therefore, the Committee made an order under CDR 13(4)(c) removing Miss Chen from the student register.
43. The Committee did not consider that the public interest in this case required it to additionally make an order under CDR 13(4)(c) restricting Miss Chen's right to apply for readmission beyond the normal minimum period.

COSTS AND REASONS

44. ACCA applied for costs against Miss Chen in the sum of £7,957.84. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing.
45. The Committee found that there was no reason in principle not to make an order for costs in ACCA's favour. Mr Jowett accepted that some reduction may be appropriate in view of the fact the time taken for the hearing was less than had been estimated. The Committee had no information about Miss Chen's financial circumstances, save for obvious inferences which could be drawn from her age and her student status.
46. The Committee considered that some reduction should be made to reflect these factors. The Committee ordered Miss Chen to pay ACCA's costs in the sum of £7,000.

EFFECTIVE DATE OF ORDER

47. The order will come into effect from the date of expiry of the appeal period, namely after 21 days from service of this written statement of the Committee's reasons for its decision, unless Miss Chen gives notice of appeal in accordance with the Appeal Regulations prior to that.

HH Suzan Matthews QC
Chairman
18 July 2019