

HEARING

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

In the matter of:	Miss Yang Chun
Heard on:	Thursday, 09 May 2019
Location:	ACCA's Offices, The Adelphi, 1-11 John Adam Street, London WC2N AU
Committee	Mrs Kathryn Douglas (Chairman) Ms Joanne Royden-Turner (Accountant) Mr Paul Moulder (Lay)
Legal Adviser:	Mr Conor Heaney
Persons present and capacity:	Mr Benjamin Jowett (ACCA Case Presenter) Ms Anna Packowska (Hearings Officer)
Observers:	Ms Karen Carlton (ACCA Appointments Board)
Summary:	OUTCOME: Allegation 1(a), 1(b), 1(c) and 1(d)(i) proved. The alternative Allegation 1(d)(ii) was not required to be considered; SANCTION: Removal from student register and disqualification from P4 exam COSTS TO ACCA: £4,000

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1. The Committee heard Allegations of misconduct against Miss Yang Chun, a student member of ACCA. Miss Chun was not present, nor was she represented. The Committee had a bundle of documents, numbered pages A-O and 1-148, and a service bundle, numbered pages 1-19.

APPLICATION FOR A PRIVATE HEARING

2. In her Case Management Form, Miss Chun requested that the entirety of the hearing be held in private. She did not advance any reasons for her request. Mr Jowett submitted that there was no basis to sustain an application for the hearing to be in private.
3. The Committee accepted the advice of the Legal Adviser. It could discern no basis to depart from the principle of open justice and refused Miss Chun's request.

SERVICE OF PAPERS / PROCEEDING IN ABSENCE

4. The Committee first considered whether the appropriate documents had been served on Miss Chun in accordance with Regulations 10 and 22 of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014, as amended on 1 January 2019, ('the Regulations'). The Committee took into account the submissions made by Mr Jowett, on behalf of ACCA, and it accepted the advice of the Legal Adviser.
5. The notice of the hearing, containing all the information required under Regulation 10(1) of the Regulations, was sent to Miss Chun at her registered address in China on 04 April 2019. By virtue of Regulation 10(1), the relevant person is required to be provided with a notice of hearing no later than 28 days before the date set for the hearing. Regulation 22(8) provides that notice is deemed served within 72 hours of despatch. The Committee was satisfied that service of the notice of hearing had been effected in accordance with Regulations 10 and 22 of the Regulations.
6. Having determined that Miss Chun had been properly served with notice of the hearing, the Committee went on to consider whether to proceed in her absence. The Committee accepted the advice of the Legal Adviser. It bore

in mind that whilst it had the discretion to proceed in Miss Chun's absence, that discretion should be exercised with the utmost care and caution.

7. The Committee noted that, in an email to ACCA dated 19 April 2019, Miss Chun confirmed receipt of the hearing documents. In an email to ACCA dated 25 April 2019, Miss Chun stated: *'I will not attend the hearing by myself and by telephone, I would rather quit from ACCA if any further cost have to be borne by me... (sic)'*. In her Case Management Form ('CMF'), Miss Chun had ticked the boxes to indicate that she did not intend to attend the hearing or be represented. Miss Chun further indicated, in the CMF that she was content for the hearing to proceed in her absence.
8. Miss Chun had made her intentions with regard to attending or otherwise participating in the proceedings perfectly plain. The Committee determined that Miss Chun had chosen not to attend the hearing, and had thereby waived her right to be present. There was no reason to suppose that she would attend a future hearing if the proceedings were to be adjourned. The Committee acknowledged that there would be some disadvantage that would accrue, as a result of the decision to proceed in her absence. However, the Committee noted that Miss Chun had engaged extensively with ACCA in a number of written responses, to which appropriate regard would be given. In addition, the Committee determined that there was a necessity for the case being dealt with expeditiously and that, in light of the serious nature of the allegations, there was also a strong public interest to proceed with the hearing in Miss Chun's absence.

ALLEGATIONS

Allegation 1

- (a) During a P4 examination on 8 June 2018, Miss Yang Chun was in possession of unauthorised materials which she had at her desk, contrary to Examination Regulations 4 and/or 5
- (b) Miss Yang Chun intended to use any or all of the unauthorised materials set out at 1(a) above to gain an unfair advantage.

(c) Miss Yang Chun's conduct in respect of 1(a) and 1(b) above was:

- (i) Dishonest, in that Miss Yang Chun 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 (as applicable in 2018).

(d) By reason of her conduct, Miss Yang Chun 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.

BRIEF BACKGROUND

9. Miss Chun first registered as an ACCA student on 21 March 2009. She had successfully passed the F7, F8, F9, P1, P2, P3 and P5 ACCA examinations.
10. Miss Chun attended the I896/01 – Harbin Exam Centre in China, on 08 June 2018, to sit the P4 examination. She had had three previous attempts at this exam. The exam commenced at 3pm. The incident took place at 6.15pm at the end of the exam.
11. Prior to the commencement of the exam, all candidates were made aware of the Examination Regulations as follows:
 - a. Prior to the exam, all candidates received an attendance docket which contained the ACCA guidelines and Regulations; and
 - b. Before the exam commenced, the supervisor's announcements drew candidates' attention to the Examination Regulations and guidelines outlined in the attendance docket. In particular, point 6 contained a clear

instruction to all candidates to remove all unauthorised materials from their desks.

12. In her SCRS 1B form, dated 8 June 2018, the Chief Invigilator, Person B, confirmed that, on the date of the exam, certain unauthorised materials *'printed mininalized paper, 5 pages (sic)'* were found in Miss Chun's possession at *'18.15'*. Person B stated that the unauthorised materials were found under Miss Chun's question and answer booklet, on Miss Chun's desk, when the booklets were being collected at the end of the examination. Person B recorded Miss Chun as explaining that she did not use the materials during the exam. When asked in the SCRS 1B form whether Miss Chun was suspected of having used the unauthorised material, Person B replied, *'not sure. They are all under candidates (sic) question booklet and answer booklet. Because we two patrolled the room actively and did not see her use them.'*
13. In her SCRS 1B form, dated 8 June 2018, Person A, a supervisor during the P4 exam at the Exam Centre, gave a similar explanation of the circumstances in which the unauthorised materials were uncovered in Miss Chun's possession, together with recounting Miss Chun's explanation that she did not use them during the exam.
14. In her account, set out in the SCRS 2B form, on the day of the incident, Miss Chun stated that she *'forgot to take the reference paper out away my desk. Invigilator believe this is not right. But during the exam I did not see them as the time is so urgent. Hopefully this can be accepted.'*
15. In a document entitled, June 2018 Examination – Irregular Script, dated 24 June 2018, the Examiner confirmed that the unauthorised materials in question were relevant to the P4 exam, but the exam questions were not answered using them.
16. In an email dated 20 August 2018, in response to ACCA, Miss Chun confirmed that she was in possession of the materials on the day of the P4 examination. She explained:

'But the 5 pages notes were not put on the desk, they were put in the box of the desk during the exam time, and I did not touch them during the exam.'

'I reviewed the notes before the exam commencement. When the exam started, I put them in the desk box till the end of the exam when the invigilator came to collect the answer booklet, she found them and took them away.'

'One reason I put them in the desk box, is because I subliminally think it no difference for where the notes put, because I am not going to touch it at all no matter where it is. Another reason is I forgot to take them away to the invigilator's designated place, as I had put my concentration on the review of the notes before the exam.'

'Although I did not use them and see any word in the exam, and I tried to explain to the invigilator in the end of the exam, but she didn't want to hear and believe me (sic).'

17. In an email dated 12 October 2018, Miss Chun confirmed that the box she was referring to in her earlier email was located under her desk at the Exam Centre. At all times in her responses to ACCA, Miss Chun maintained that she did not use the materials during the exam. She stated that they were kept in the box at her desk at all times. Miss Chun denied that, by her possession of the materials, she was dishonest.

SUBMISSIONS ON BEHALF OF ACCA

18. Mr Jowett set out the background to the referral of Miss Chun to the Committee. He submitted that the evidence demonstrated that Miss Chun took the notes into the exam with the intention of gaining an unfair advantage. The fact that Miss Chun did not use the notes in the exam did not amount, in Mr Jowett's submission, to a defence to the Allegation. Mr Jowett submitted that, at the very least, Miss Chun intended to have the unauthorised material to hand, should the need arise for her to use it during the exam. In the event, she did not use it.

19. Mr Jowett submitted that, in respect of Allegations 1 (a) and 1(b), Miss Chun's conduct was both dishonest and contrary to the Fundamental Principle of Integrity. He submitted that Ms Chun's dishonest conduct had brought discredit to her, the Association and the profession, and was so serious that it amounted to misconduct.

DECISION ON ALLEGATION AND REASONS

20. The Committee took into account the submissions made by Mr Jowett, the documentary evidence and accepted the advice of the Legal Adviser.

Allegation 1(a) – proved

21. Miss Chun sat the P4 exam on 8 June 2018. She admitted that she was in possession of the materials. The Committee also accepted as credible and reliable, the evidence of Person B and Person A, that Miss Chun had the materials with her at her desk during the exam. Exam Regulation 5 states: *'You are not allowed to possess, use, or intend/attempt to use any unauthorised materials while the exam is in progress (whether at your desk or otherwise).'* Exam Regulation 4 defined unauthorised materials as *'books, notes or other materials.'* The Committee was satisfied that the notes in Miss Chun's possession throughout the exam were unauthorised materials. The Committee therefore found Allegation 1(a) proved.

Allegation 1(b) – proved

22. Exam Regulation 7 provides that, where unauthorised materials relevant to the syllabus being examined are found in the possession of a student, it is to be assumed that the student intended to use them to gain an unfair advantage. The Committee noted that this amounted to a presumption, although one which could be rebutted by the student. There was, therefore, a burden on Miss Chun to show, on the balance of probabilities that she did not intend to use the unauthorised materials to gain an unfair advantage in the exam.

23. The Committee considered Miss Chun's explanation, contained in a number of written responses to ACCA, very carefully. It noted her assertion that,

while she had the notes in her possession, she had not used them to assist her in the exam. In essence, Miss Chun had stated that the fact that the notes were in her possession was due to an innocent oversight on her part. Miss Chun asserted that by bringing them in with her into the exam, she had not acted intentionally, in order to gain an unfair advantage. In addition, Miss Chun stated that, by placing them in a box at her desk, there was no opportunity for her to use the notes to assist her during the exam. It also noted the conclusion of the Examiner, that the materials were not used by Miss Chun in her answers to the P4 exam paper.

24. Set against this, however, was the fact that the materials were in Miss Chun's possession at her desk during the exam. Whether Miss Chun chose, in fact, to use them during the exam was immaterial. The materials were unauthorised and were relevant to the syllabus being examined. Her actions, in having the unauthorised materials at her desk, was a breach of the Exam Regulations and the unambiguous guidance given to ACCA students prior to the commencement of the exam. Miss Chun had sat a number of other ACCA papers. It was reasonable to expect that Miss Chun would have been acquainted with what was, and what was not, permitted to be taken into the exam. In addition, Miss Chun had attempted the P4 examination unsuccessfully on three previous occasions. Miss Chun's explanation as to how she came about to possess the notes, and that she had not thereby sought to gain an unfair advantage by having them, did not seem credible to the Committee, and the Committee did not believe her account. Miss Chun had failed, on the balance of probabilities, to rebut the presumption made against her that she had possessed the unauthorised materials, with the intention of gaining an unfair advantage.

Allegation 1(c) – proved

25. The Committee was satisfied that Miss Chun's conduct in intending to cheat in the exam was dishonest. The Committee concluded that Miss Chun had intended to cheat in an exam. It was also satisfied that her conduct would be considered as dishonest, according to the standards of ordinary decent people. The Committee was also satisfied that Miss Chun's conduct was not '*straightforward or honest*' and determined, therefore, that she had also breached the Fundamental Principle of Integrity.

Allegation 1(d)(i) - proved

26. The Committee determined that Miss Chun's dishonest conduct in attempting to obtain an unfair advantage in the P4 examination had brought discredit to her, the Association and the accountancy profession, and that her conduct was so serious as to amount to misconduct.
27. The Committee did not consider Allegation 1(d)(ii), which was an alternative to Allegation 1(d)(i).

SANCTION AND REASONS

28. Mr Jowett informed the Committee that there were no previous disciplinary findings against Miss Chun.
29. The Committee accepted the advice of the Legal Adviser who referred it to Regulation 13(4) of the Regulations and to ACCA's Guidance for Disciplinary Sanctions, with effect from 1 January 2019 ("GDS"). In particular, he referred the Committee to Section C, which gives guidance on the sanctions available, and Section E2, which gives specific guidance in relation to cases of dishonesty.
30. In considering what, if any, sanction to impose, the Committee bore in mind the principle of proportionality, and the need to balance the public interest against Miss Chun's own interests. The Committee reminded itself that the purpose of any sanction was not to be punitive, but to protect members of the public, maintain public confidence in the profession and ACCA, and to declare and uphold proper standards of conduct and behaviour.
31. The Committee had regard to Section F of the GDS. It regarded Miss Chun's actions, in acting dishonestly and with a lack of integrity, as very serious.
32. The Committee considered the aggravating features of the case. Miss Chun's actions had the potential to seriously undermine public trust and confidence in the accountancy profession.

33. The Committee considered the following to be the mitigating factors of the case:

- a. Miss Chun had demonstrated some limited insight into the seriousness of her actions;
- b. The incident was isolated. Miss Chun had completed her other professional examinations without any suggestion of impropriety on her part;
- c. Miss Chun had expressed regret for being in possession of the notes;
- d. Miss Chun had fully co-operated and engaged with ACCA in the investigation into her conduct.

34. Given the seriousness of the misconduct, the dishonesty and the breach of the Fundamental Principle of Integrity, the Committee determined that it would not be appropriate to take no further action, and that the public interest required the imposition of a sanction.

35. The Committee considered the available sanctions from the least serious upwards. It considered whether the appropriate and proportionate sanction to impose upon Miss Chun was an Admonishment or a Reprimand. The Committee, however, determined that, to impose either of these sanctions would not adequately reflect the seriousness of the misconduct, nor would it adequately uphold the public interest.

36. The Committee went on to consider the sanction of a Severe Reprimand. It noted that some of the factors for consideration set out in the GDS in relation to such a sanction were present in this case. However, the Committee determined that taking an unauthorised item into a professional examination, with the intention of gaining an unfair advantage, was a grave departure from the standards expected of an ACCA student, and was of the utmost seriousness. The Committee concluded that Miss Chun's conduct in so doing was reprehensible, and fundamentally incompatible with her remaining a student of ACCA.

37. The Committee determined that the only appropriate and proportionate sanction was Removal from the student register. The Committee concluded that no other sanction would adequately reflect the gravity of Miss Chun's conduct, nor adequately uphold the public interest. Honesty and integrity go to the heart of the accountancy profession. In the clear view of the Committee, Miss Chun's conduct in taking an unauthorised item into the exam, with the intention of gaining an unfair advantage, fell far below the standards expected of an ACCA student.

38. In light of its findings, and while noting that there was no evidence that Miss Chun had used the unauthorised materials in question, the Committee considered that Miss Chun should also be disqualified, under Regulation 13(4)(f), from the P4 exam that she sat on 8 June 2018. Public confidence in the profession would be undermined if such an order was not made.

ORDER

- i. Miss Yang Chun is removed from ACCA's student register.
- ii. Miss Yang Chun is disqualified from the P4 examination that she sat on 8 June 2018.

EFFECTIVE DATE OF ORDER

39. The Committee ordered that the Order will take effect from the date of the expiry of the appeal period, as provided for in the Appeal Regulations, or at the conclusion of any appeal if one is made.

COSTS AND REASONS

40. Mr Jowett applied for costs in the sum of £6603.33. He provided the Committee with a detailed schedule of costs incurred, numbering pages 149-152, to which the Committee gave careful consideration. Mr Jowett submitted that, while the costs were appropriate and reasonable, the Committee might wish to consider some reduction in the amount of costs to be paid by Miss Chun, to reflect the fact that the hearing had not taken a full day as anticipated.

41. The Committee accepted the advice of the Legal Adviser who referred it to ACCA's Guidance for Costs Orders.
42. The Committee had not been provided with a statement of Miss Chun's financial means. However, Miss Chun had made it clear, in her responses to ACCA that she was of limited financial means. Accordingly, having to pay costs would impose a considerable financial burden on her.
43. The Committee determined that the amount applied for by ACCA should be reduced to reflect the earlier finishing time of the hearing, together with Miss Chun's difficult financial position.
44. Accordingly, the Committee determined that it was fair and reasonable to order Miss Chun to pay ACCA costs in the sum of £4000.

ORDER

- i. Miss Yang Chun shall pay the sum of £4000 to ACCA by way of costs.

Mrs Kathryn Douglas
Chairman
09 May 2019