

HEARING

DISCIPLINARY COMMITTEE THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Xinya Bai

Heard on: Tuesday, 21 May 2019

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

Committee: Mrs Helen Carter-Shaw (Chairman)
Mr Martin Davis (Accountant)
Mrs Suzanne McCarthy (Lay)

Legal Adviser: Mr Sanjay Lal

Persons present

and capacity: Mr Benjamin Jowett (ACCA Case Presenter)
Mr Christopher Badoo (Hearings Officer)

Observers: Mr James Walker (ACCA Appointments Board)
Miss Anita Phillips (ACCA Hearings Manager)

Summary: Removal from the Student Register with effect from the end of the appeal period.

Costs: Miss Xinya Bai to pay costs to the ACCA of £4000

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PRELIMINARY APPLICATIONS/SERVICE OF PAPERS

1. The Committee had before it a Bundle of papers pages 1-98 and a Service Bundle, pages 1-11.

NOTICE OF HEARING/ PROCEEDING IN ABSENCE

2. The Committee noted the Notice of the Hearing was sent to Miss Bai on the 17 April 2019, by email to her registered email address. In the circumstances the Committee is satisfied that proper Notice has been given in accordance with the Complaints and Disciplinary Regulations.
3. The Committee turned to the next issue, which was whether to proceed in the absence of Miss Bai. The Committee noted that no response had been received from Miss Bai when she was asked whether she would attend the hearing. She had not applied for the hearing to be adjourned. In the circumstances the Committee is satisfied that Miss Bai had voluntarily absented herself, and there was little likelihood that she would attend on a future date. Furthermore, the Committee is satisfied that it would be in the public interest for the hearing to proceed, and that the Committee could determine the matter fairly and justly.

ALLEGATION(S)/BRIEF BACKGROUND

Allegation 1

- 1(a) During a P1 examination on 6 June 2018, Miss Xinya Bai was in possession of unauthorised materials which she had at her desk, contrary to Examination Regulations 4 and/or 5.

1(b) Miss Xinya Bai intended to use the unauthorised materials at 1(a) above to gain an unfair advantage, contrary to Examination Regulation **7(a)**.

1(c) Miss Xinya Bai 's conduct in respect of 1(b) above was:

(i) dishonest, in that she intended to use 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 Xinya Bai 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.

4. On 4 October 2016, ACCA registered Miss Xinya Bai as student. She has conditional exemptions from the F1, F2, F3, F4 and F5 examinations. She has passed the F6 Taxation, F7 Financial Reporting and F9 Financial Management exams on the first attempt. She passed the F8 Audit and Assurance exam on the third attempt. She had attempted the P1 Governance, Risk and Ethics exam three times before the June 2018, exam session. Miss Xinya Bai has also attempted the P2 and P3 exams.
5. On 6 June 2018, Miss Xinya Bai attended the ACCA exam centre in Kunming, China, to sit the P1 exam. The exam started at 15.00.
6. On 6 June 2018, Person A, an invigilator at the P1 exam, completed an SCRS1A form about an incident involving Miss Xinya Bai.
7. Person A confirmed that there was no record of Miss Xinya Bai arriving late for the examination, and confirmed that she had arrived with her examination docket. The invigilator gave the following account:

'I witnessed the student taking something out and then put it in to her pocket. I asked her to show me the thing. She tried to refuse but I insisted to ask her to give me the thing (a piece of blue paper with very small words on it) in a strict and polite way. Then she gave it to me. I started to notice her around 16:45. I kept watching her until I saw she [her] putting the thing into her pocket at around 17:05'.

'I said: "Please show me the thing in your pocket'. She shook her head. Then she said: "I can give you the thing. Please don't report it". I took the papers from her, then said: "Keep doing your exam please".'

8. On the same day, 6 June 2018, Miss Xinya Bai completed an SCRS2A form, which is intended to be used for alleged inappropriate/unprofessional behaviour. In answer to the question 'Please provide a full and detailed account of the incident that took place during your examination', Miss Xinya Bai gave the following information.

'I take out the blue paper with the explanation with terms and want to find some answers but I find the teacher was watching me, and then I was nervous and I pick it in my bag, then the teacher come to me and ask me to give it to her but I refuse it at first time, but the teacher keep watching me and ask it give it to her, and I give it to her at second time.'

9. In the section on the SCRS2A form headed additional comments, Miss Xinya Bai wrote: *'I will willing to accept what ACCA will punishment me.'*
10. On 31 August 2018, Miss Xinya Bai sent the Investigations Officer her response to the Investigations Officer's enquiry, which had included the questions posed on ACCA's SCRS1A form. Miss Xinya Bai said: *'I was not present when the supervisor made the announcement, because at that day before I go to the toilet before I arrive at the classroom. Then I when I go into the room, the supervisor has finished.'*
11. In answer to the question: *'Where did you place your personal belongings (such as mobile phone, coat, bag etc)?'*, Miss Xinya Bai said *'In my pocket'.*

12. The Investigations Officer's enquiry had also asked: *'Please confirm whether you were in possession of unauthorised materials while your exam was in progress?' and 'In particular, please see the picture of the blue note in Annex A of this letter. Please confirm whether or not that is the note you had in the examination'*. Miss Xinya Bai replied *'Yes' to both questions.*"

13. In answer to the questions about what unauthorised materials her possession comprised of; the time that the unauthorised materials were found in her possession; and whether or not she accepted that the unauthorised materials were relevant to the syllabus being examined, Miss Xinya Bai said: *'At around 17.15. Yes it some definition of the proper nouns.'*"

14. The Investigations Officer's enquiry also asked: *'Please confirm the purpose for which you had the unauthorised materials in your possession'; 'Please confirm whether you used the unauthorised materials that were found in your possession. Please give an explanation for your answer'; and 'Please confirm whether you intended to gain an unfair advantage from these unauthorised materials'*. Miss Xinya Bai gave the following reply.

'I can ensure I didn't use it. First the words in the unauthorized paper is not relevant about the question on the exam paper. Second the invigilator has notice me before I want to do anything.

No, because i find the teacher has notice me, in order to let the teacher not find the unauthorized paper, I just want to hide it.

I want to clarify my thinking by the unauthorized paper.'

15. The ACCA Examiner who marked Miss Xinya Bai's examination script on 26 June 2018, made the following comments on the Irregular Script form. (Page 28.)

a. In response to the yes/no statement *'The material is relevant to the syllabus for your paper'*, the examiner circled *'Yes'*.

b. In response to the yes/no statement *'The material is relevant to this particular examination'*, the examiner circled *'Yes'*.

c. In response to the yes/no statement: 'The notes have been used when the student was attempting this examination', the examiner circled 'No'.

16. The examiner's comments gave some further explanation.

'The note contains information on internal audit, external risk audit, content of external report on internal controls and the need for internal audit - all of these are in the P1 syllabus. The notes on the external report on internal controls is relevant to Q1 d i. The exact words on the notes were not used in the candidates answer to (d i) and as a result there is no clear evidence that the notes were used.'

17. On 9 July 2018, ACCA's Exams Operations Service Manager wrote to Miss Xinya Bai, by email, to tell her that the incident on 6 June 2018, was being referred to the Professional Conduct Department (the Investigations department) (Pages 52 to 54). On 18 July 2018, Miss Xinya Bai sent an email to ACCA.

To Whom it may concern, my name is Xinya Bai, an ACCA student (ACCA ID: 38171110).

Nowadays, I have attended the ACCA exam in June and the examiner on the spot believed that I had done something that violation of examination regulation.

I wrote some definitions on a piece of paper, and I just recited it before the exam, because I think I still have half an hour to sit in the examination room before the exam starts. But the teacher took the paper from my pocket during the examination, but I promised that I didn't copy a word on the paper. ACCA can ... compare the paper with my paper. I do not want to pass the buck of this accident. I just want you ACCA take the actual situation into full consideration and deal with leniently as far as possible.

I have found that my ACCA account has been suspended. And I'd like to know your judgement for this issue and how could I release my account.

Thus, I am writing for you to ask for a help. If you need further explanations or some other evidence materials, please let me know. I will make every effort to meet your requirement in order to continue attend rest exams.

*Thank you for your patience and I'm looking forward to your reply. Best wishes,
Xinya Bai*

DECISION ON FACTS/ALLEGATION(S) AND REASONS

Allegation 1

- 1(a) During a P1 examination on 6 June 2018, Miss Xinya Bai was in possession of unauthorised materials which she had at her desk, contrary to Examination Regulations 4 and/or 5. Found Proved
- 1(b) Miss Xinya Bai intended to use the unauthorised materials at 1(a) above to gain an unfair advantage, contrary to Examination Regulation 7(a). Found Proved
- 1(c) Miss Xinya Bai 's conduct in respect of 1(b) above was:
- (i) dishonest, in that she intended to use the unauthorised materials which she had at her desk to gain an unfair advantage. Found Proved
 - (ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2018) Found Proved
- 1(d) By reason of her conduct, Miss Xinya Bai 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; Found Proved or
 - (ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of 1(a) above. Not Considered

18. With regard to Allegation 1(a), the Committee noted that Miss Bai has always accepted that she had the note in her possession. The Committee found this allegation proved in its entirety in relation to Exam Regulations 4 and 5, with regard to Allegation 1(a).
19. With regard to Allegation 1(b), the note was clearly accepted by Miss Bai as being relevant to the subject matter of the exam; it was a fair and proper inference she would have been aware of what she could and could not take to her desk area. She also confirmed in her SCRS2A that she had read the inverse of her attendance docket, which sets out the Exam Regulations and defines unauthorised materials. The Committee determined that Miss Bai has not provided any evidence to discharge the burden of proof upon her, and the Committee therefore found Allegation 1(b) proved. The Committee finds that the purpose of having such a note was to gain an unfair advantage as its contents were clearly relevant to the syllabus.
20. In regard to Allegation 1(c), the Committee is in no doubt that such conduct would be regarded as dishonest according to the standards of ordinary decent people. The Committee was satisfied that Miss Bai's actions would clearly be regarded as dishonest by bringing unauthorised material into the exam room in the form of a relevant note. The Committee also observed the size of the note and the writing on it. They were both small and could easily be concealed rather than being revision notes or notebooks. The fact the note was not used does not detract from the dishonesty, in that Miss Bai was stopped from using it, when the exam invigilator noted her actions. The Committee therefore found Allegation 1(c) proved and such a finding would also prove Allegation 1(c)(ii).
21. Misconduct is a matter for the Disciplinary Committee's professional judgment. In the light of the evidence the Committee was satisfied that misconduct is made out. The public would view such conduct as deplorable as it relates to the maintenance of trust in the profession and to the integrity of professional examinations. The Committee therefore found Allegation 1(d)(i) proved. In the light of this it was unnecessary to consider Allegation 1(d)(ii) which was charged in the alternative.

SANCTION

22. The Committee had regard to the Guidance for Disciplinary Sanctions (the Guidance). It accepted the advice of the Legal Adviser. It therefore considered the least restrictive sanction first and moved upwards only when proportionate to do so. The Committee has balanced Miss Bai's interests with that of the public interest. This includes not only the protection of the public, but also the maintenance of public confidence in the profession and the declaring, and upholding of proper standards of conduct, and of behaviour.
23. The Committee considered the aggravating and mitigating factors. It found the following mitigating factors:

- Some admissions at the outset.
- Some engagement in the investigative process.

The Committee found the following aggravating features:

- Serious matter involving dishonest conduct that goes to the core of the integrity of professional exams.
 - Some minimisation of culpability by stating that the note was not used.
24. The Committee first considered taking no action. It was in no doubt that to do so would fail to mark the gravity of the dishonesty and the misconduct and would undermine confidence in the profession and in ACCA. Matters of this nature demand a sanction. Having decided that it was necessary to impose a sanction, it considered sanctions in ascending order.
25. The Committee first considered an Admonishment or Reprimand but concluded that the matters found proved were so serious that public confidence in the profession, and in the regulator, would be undermined if either such order were made. Such a sanction would be insufficient and not proportionate.

26. The Committee then considered a Severe Reprimand. It concluded that this would be neither sufficient nor appropriate as a sanction in the light of the serious nature of the matters found proved.
27. The Committee determined that the only proportionate and appropriate sanction in respect of the Allegations would be that of Removal from the Student Register. This sanction reflects the gravity of the matter as noted at Section E2 of the Guidance. It demonstrates a serious departure from the standards expected, involving as it does a finding of dishonesty in respect of the sitting of a professional exam to obtain a qualification to which the student is not entitled. There is a strong public interest in maintaining the integrity of professional exams.

COSTS AND REASONS

28. The Case Presenter applied for adjusted costs in the sum of £4693.29. He provided a Schedule of Costs, pages 99-100, which he confirmed had been sent to Miss Bai.
29. The Committee noted that Miss Bai had not prepared a Statement of Financial Position.
30. To reflect the fact that the hearing had lasted only half a day the Committee made a costs order claimed in the sum of £4000. This included a reduction in respect of time for the Case Presenter and the Hearings Officer.

EFFECTIVE DATE OF ORDER

31. The Case Presenter made no application for an immediate Order. The Committee was satisfied that the interests of the public do not require that its Order should have immediate effect under Regulation 20.

Mrs Helen Carter-Shaw
Chairman
21 May 2019