

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

- In the matter of:** Miss Jiahang Guan
- 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)
- Summary:** Removal from the Student Register with effect from the
Appeal expiry date
- Costs:** Miss Guan to pay ACCA costs of £3000

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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 1-12.

NOTICE OF HEARING/ PROCEEDING IN ABSENCE

2. The Committee noted the Notice of the Hearing, which although dated 18 May 2019, was sent to Miss Guan on the 18 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 Guan. The Committee noted her email response of 18 April 2019 in which she stated that she would not be attending the hearing. She did not apply for the hearing to be adjourned. In the circumstances the Committee is satisfied that Miss Guan had voluntarily absented herself and, as she had sought no adjournment nor accepted the offer of attending by phone, 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

During an F4 (ENG) Corporate and Business Law computer based exam (CBE) on 10 January 2018:

- 1(a) Miss GUAN Jiahang used and/or was in possession of an unauthorised item, namely a mobile phone which she had at or on her desk contrary to Exam Regulation 7.

1(b) Miss GUAN Jiahang took photographs of exam question(s) using the mobile phone referred to in 1a above which she shared with person B.

1(c) Miss GUAN Jiahang'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 knew the conduct referred to in paragraphs 1 (a) and 1 (b) was wrong in particular because she knew person B could and/or was likely to share the photo(s) with entrants for the same exam who would thereby obtain an unfair advantage; and /or

(ii) Contrary to the Fundamental Principle of Integrity

1(d) By reason of her conduct Miss GUAN Jiahang 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;

(ii) Liable in the alternative to disciplinary action pursuant to bye-law 8(a)(iii), in respect of 1(a), only.

4. On 23 July 2018, ACCA received an email from an anonymous individual, Person A. He raised concerns about the ACCA's Computer-based exams (CBE) after he found F4 CBE questions on the internet. Person A supplied ACCA with the Baidu Netdisk (a China based shared cloud data storage) web link, where he found the CBE questions, and also attached a sample of fourteen pictures from the Baidu Netdisk web link he collected.

5. The contents of Person A's e-mail was reviewed by ACCA's CBE Delivery Team and identified ACCA ID: 3912873, Miss Guan Jiahang from one of the photographs submitted by Person A.

6. ACCA wrote to Miss GUAN, 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.

7. In her response Miss GUAN admitted she took the pictures and she stated the following (**page 88 of the Bundle**):

I sincerely apologize to the ACCA headquarters. At that time, I only sent it to my classmate which considered to join the ACCA. She wanted to see that the real exam form and questions. But I really don't know how it spreads on the website. Actually, I can pass the exam by myself and I believe I have sufficient capability to continue. But because of my momentary mistake, I not only wasted more than two years hard working, but also I may say goodbye to my beloved ACCA subject. I'm regret about that. I saw the things too simple.

At the end, I want to say sorry again for the trouble caused by my mistake. At the same time, thanks ACCA for giving me help and bringing me knowledge. I will follow the rules and work hard in my future life.

8. In a follow-up exchange, ACCA asked Miss GUAN the following questions:
- (1) Can you please let me know the name of the class mate you sent the pictures to? Is this classmate an ACCA student?
 - (2) Please confirm how many pictures you took of the F4 exam questions?
 - (3) Please confirm how many photos did you send to your friend?
 - (4) How did you send the photo to your friend, for example was it by e-mail, WeChat or other? Please forward me copies of the e-mail / WeChat / other you sent to your friend with the F4 exam questions.
 - (5) Did your friend tell you know they were going to post the questions on Baidu Netdisk? [SIC]

9. In her response, Miss GUAN stated:

My classmate didn't join the ACCA group, because she thought it was too difficult for her. She said she would not send those photos to anyone. I

remembered I took above 40-50 photos, it happened one year ago and I can't remember clearly, we used QQ at that time but the record has already been deleted. But once she said her QQ has been stolen. I also felt confused why the photos spread to the internet.

I want to say sorry again for the trouble caused by my mistake. I will cooperate with the investigation positively. ACCA is very important for me in my study career. Thanks for giving me help and bringing me knowledge. I will follow the rules and work hard in my future life.

10. In addition, Miss GUAN confirmed that she used a mobile phone (iPhone 6s) to take the photos.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

Allegation 1

During an F4 (ENG) Corporate and Business Law computer based exam (CBE) on 10 January 2018:

- 1(a) Miss GUAN Jiahang used and/or was in possession of an unauthorised item, namely a mobile phone which she had at or on her desk contrary to Exam Regulation 7. **Found Proved.**
- 1(b) Miss GUAN Jiahang took photographs of exam question(s) using the mobile phone referred to in 1a above which she shared with person B. **Found Proved.**
- 1(c) Miss GUAN Jiahang'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 knew the conduct referred to in paragraphs 1 (a) and 1 (b) was wrong in particular because she knew person B could and/or was likely to share the photo(s) with entrants for the same exam who would thereby obtain an unfair advantage; **Found Proved**, and /or

- (ii) Contrary to the Fundamental Principle of Integrity.

Found Proved

1(d) By reason of her conduct Miss GUAN Jiahang 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; **Found Proved**

- (ii) Liable in the alternative to disciplinary action pursuant to bye-law 8(a)(iii), in respect of 1(a), only. **Not Considered.**

11. With regard to Allegation 1(a), the Committee noted that Miss Guan has always accepted that she had the mobile phone in her possession and that she used it. The Committee noted the wording of Exam Regulation 7 which states "...you are also not permitted to use or have at your desk a mobile phone..." The Committee found this allegation proved in regard to Allegation 1(a).
12. With regard to Allegation 1(b), the Committee noted that Miss Guan has always accepted that she had taken a large number of photographs for her friend who had wanted to see the type of exam being set by ACCA. A number of the photographs with Miss Guan's ACCA ID clearly visible were in the Bundle. The Committee therefore found Allegation 1(b) proved.
13. In regard to Allegation 1(c)(i), 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 Guan's actions, namely the taking of a large number of photographs of questions in a closed exam, and then passing these photographs to someone else would clearly be regarded as dishonest. The Committee was told by Miss Guan that her was thinking of becoming an ACCA student. The Committee was satisfied that such sharing would allow this friend to derive an unfair advantage if she had subsequently joined ACCA. The Committee therefore found Allegation 1(c)(i) proved, and such a finding would also prove Allegation 1(c)(ii).
14. 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. Miss Guan's conduct brings her, the reputation of ACCA and the profession into disrepute. The Committee therefore found Allegation 1(d)(i) proved. In light of this it was unnecessary to consider Allegation 1 (d)(ii) which was in the alternative.

SANCTION

15. 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 balanced Miss Guan'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 performance.
16. The Committee considered the aggravating and mitigating factors. It found the following mitigating factors:
 - Admissions at the outset to possession of the mobile phone and photographing the exam questions.
 - Engagement with the disciplinary process.

The Committee found the following aggravating feature:

- Serious matter involving dishonest conduct that goes to the core of the integrity of professional exams.
 - The volume of photographs taken.
 - Miss Guan was asked for and did not give the name of her friend.
17. 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.

18. 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.
19. 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.
20. 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. It demonstrates a serious departure from the standards expected, involving as it does a finding of dishonesty in respect of the integrity of a professional exam. The Committee noted that the matter came to the attention of the ACCA because the exam questions eventually found their way to a third party cloud based website. There is a strong public interest in maintaining the integrity of professional exams.

COSTS AND REASONS

21. The Case Presenter applied for costs in the revised sum of £5837.50 to reflect the fact that the hearing took only half a day. He provided a Summary Schedule of Costs at pages 99-100.
22. The Committee noted that Miss Guan had not prepared a Statement of Financial Position but it had regard to her email of 18 April 2019, where she stated that she had no economic means.
23. To reflect the fact that the hearing had lasted only half a day the Committee awarded costs in the sum of £3000. This included a reduction in respect of reduced time for the Case Presenter and the Hearings Officer, as well as the ability of Miss Guan to pay.

EFFECTIVE DATE OF ORDER

24. 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