

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Wenxuan Du

Heard on: Tuesday, 28 May and Wednesday, 16 October 2019

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

Committee: Mr James Kellock (Chairman)
Ms Susan Gallone (Accountant)
Mr Garrett O'Reilly (Lay)

Legal Adviser: Mr Andrew Granville Stafford (28 May 2019)
Mr Richard Ferry-Swainson (16 October 2019)

Persons present

and capacity: Ms Wenxuan Du (Student – attended via telephone)
Ms Min Xu (Interpreter)
Mr Benjamin Jowett (ACCA Case Presenter)
Ms Anna Packowska (Hearings Officer)

Observers: None (28 May 2019)
Mr James Walker (16 October 2019)
Mr Peter Brown (16 October 2019)

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Summary: Allegations 1(a), 1(b), 1(c)(i) and (ii), and 1(d)(i) found proved. Student removed from the Register. Costs to be paid to ACCA: £600.

PRELIMINARY

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Miss Wenxuan Du.
2. The Committee had before it a bundle of papers (pages 1 to 103), an additional bundle (pages 1 to 35), and a service bundle (pages 1 to 19). At the start of the hearing the Committee also received a bundle of certificates and other documents in Chinese, numbering 25 pages, sent by Miss Du.
3. Miss Du attended the hearing by telephone and was assisted by an interpreter.

APPLICATION

4. At the outset of the hearing, Mr Jowett applied to amend Allegation 1(a) by changing 'Advanced Audit and Assurance' to 'Audit and Assurance'. The inclusion of the word Advanced had, he said, been a clerical error. Miss Du did not object. The Committee granted the application under Regulation 10(5) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ('CDR').

ALLEGATIONS AND BRIEF BACKGROUND

5. The allegations as amended against Miss Du are as follows:

Allegation 1

- (a) During an AA (Audit and Assurance) examination on 3 September 2018, Miss Wenxuan Du was in possession of unauthorised materials which she had at her exam desk, contrary to Examination Regulations 4 and/or 5.
- (b) Miss Wenxuan Du intended to use any or all of the items set out at 1(a) above to gain an unfair advantage, contrary to Examination Regulation 7;

(c) Miss Wenxuan Du's conduct in respect of 1(b) above was:

(i) Dishonest, in that Miss Wenxuan Du intended to use any or all of the unauthorised materials which she had at her exam 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 Wenxuan Du 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.

6. Miss Du is a student member of ACCA, having been admitted to student membership on 20 October 2017, and is resident in China. Miss Du attended the Shandong I exam centre on 3 September 2018, in order to sit the AA examination.

7. Prior to examinations, all candidates receive an attendance docket which contains ACCA's Examination Regulations and Examination Guidelines. These include the following regulations:

Examination Regulation 4

You are not allowed to take to your exam desk any books, notes or other materials (except those outlined in the guidelines below). These are known as 'unauthorised materials'.

Examination Regulation 5

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).

Examination Regulation 7(a)

If you breach exam regulation 4 and/or 5 and the 'unauthorised materials' are relevant to the syllabus being examined, it will be assumed that you intended to use them to gain an unfair advantage

in the exam. In any subsequent disciplinary proceedings, you will have to prove that you did not intend to use the unauthorised materials to gain an unfair advantage in the exam.

8. Before all examinations, the Supervisor reads a set of announcements to the candidates. These include the following:

‘ . . . please remove all items, other than those listed on your attendance docket, from your desk now . . . Candidates found in possession of unauthorised materials are in breach of the examination regulations and their conduct will be reported to ACCA. If you attempt to gain an unfair advantage in the examination, you are likely to be removed from ACCA's student register following disciplinary proceedings.’

9. The exam commenced at 2pm, and was due to last for 3 hours 20 minutes. ACCA's case is that at 3.32pm the examination supervisor, Person B, found unauthorised materials, consisting of an A4 sheet of paper with handwritten notes on both sides, on Miss Du's desk.

10. Person B completed an SCRS1 form. In it, she states how she found the notes, as follows:

“When I was passing by, the cheat sheet was directly put on the desk near the keyboard. I saw a mass of notes written in different colors on it. Since the candidate was sitting in the corners, I went directly to her and picked the sheet up and found it was filled with notes on both sides.”

11. In answer to a question about how she was first alerted to the student with the unauthorised material, Person B stated *‘Since the notes was written in green, it was very obvious to find when I was inspecting the test room. It could be recognised from a far away distance.’*

12. Person B also said in the form:

‘I was inspecting and patrolling around the testroom. When I passed by the last line I glanced at the corner and noticed some notes in green color. So I went directly to the candidate (Wenxuan Du 4039674) who was sitting in the corner. I confirmed the green colored notes was a cheat sheet with a mass of words on both sides.

It was an A4 size paper. I took it away and noted the time. Then I sent photos to BC staff. Another invigilator [Person A] witnessed the cheat sheet.'

13. Person B further explains that she told the student that *'it was not permitted to bring any notes in test room which had been mentioned many times before the test started. She said she didn't use this paper but only put it on the desk.'* Person B further stated that Miss Du also said *'I only put it there but didn't look at it.'*
14. ACCA also relied on a statement from the invigilator, Person A, who corroborated Person B's account.
15. On the day of the examination, Miss Du completed an SCRS 2B form. She stated on the form that the paper seized was *'No relevant'* to the syllabus being examined. When asked to confirm the reason she had the material in her possession, she answered *'Forget to bring it out'*. She added *'A paper for me to review at the bus. I just forget to bring it out before the exam begin.'*
16. ACCA relied on an 'Irregular Script Report' prepared by an Examiner. The Examiner confirms that the material is relevant to the syllabus, and is relevant to the examination. In relation as to whether the material has been used when the student was attempting the exam, the examiner has stated *'No I think'*. ACCA did not assert that Miss Du had actually used the notes to assist in answering any of the questions before the notes were seized.
17. On 9 October 2018, ACCA's Exam's Conduct Department wrote to Miss Du in relation to the irregularity that had occurred at the exam centre, and requested a response from her.
18. On 10 October 20018, Miss Du provided a response to Exams Conduct, in which she said:

'The city for me to take the exam is far from my home, so I went there by train. Before I get off the train, I put one piece of my notes in my trousers pocket in a hurry. Then I hurried to the destination for fear of being late. Before entering the examination room, I carefully put my cellphone at another room but totally forgot I still hold a piece of notes in my pocket for review at the train. I admit that this is due to my carelessness. But I realised this as soon as I sit down on my seat

in the examination room. I took it out from my pocket to the desk and want to ask the supervisor to take it away. But she is busy making a briefing to us. I didn't interrupt her and waited until she came near me. I put the folded paper obviously on my desk and didn't hide it in the corner or under something else because I think under this way the supervisor would not misunderstand me when she came near me. Then I began to stare at the computer screen to finish my exam paper and wait her to come. When she came near me, she noticed the paper and I gave her the paper immediately . . . I really didn't mean to cheat. I didn't hide the paper and handed it in as soon as the supervisor came near me.'

19. On 1 November 2018, ACCA's Investigation Department, via the Investigations Officer, wrote to Miss Du to advise her of the complaint which had been received, and requested her comments in this regard by 22 November 2018. On 18 November 2018, Miss Du provided a response to the Investigations Officer asserting,

'1. Yes, I accept that the enclosed copy were the materials that I had in my possession during the exam on 3 September 2018. 2. Yes [it is relevant to the syllabus], because this is one page of my learning notes. 3. No, I didn't intend to use the unauthorised materials during the exam. 4. No, I didn't use it. 5. As what I explained in my comments, the paper is one page of my review notes. The following enclosed material are other pages of my notes. You can see that they are all colourful and noticeable. I put the folded paper obviously on my desk and didn't hide it in the corner or under something else because I think under this way the supervisor would not misunderstood me when she came near me.'

20. In her Case Management Form Miss Du stated *'I admit that I bring unauthorized material in to the test room. But I didn't intend to use it because I forget to it out of my pocket. I didn't realize this until the examination began. I took it out and put it on my desk as soon as I realize this.'*

21. In a further email to ACCA dated 2 May 2019, Miss Du said:

'Once again, I apologize for my behavior. Bring the review material into the examination room is wrong. This is my second time to attend

F8. I did not pass F8 before, so I am extremely nervous and attach great importance to this F8 exam. It is no exaggeration to say I was reviewing on the bus, in the preparation room, and mentally reviewing points before I entered the examination room. Therefore I was completely unaware that I had forgotten to take out my review materials from my pocket. . . What's more, I really didn't mean to cheat. Ever since I realized that I had accidentally brought my revision materials into the exam room, I kept them on my desk. If I want to cheat to get an unfair score, I would put it under the keyboard or under the calculation paper, so as not to be found by the invigilator. In the notes of the invigilator, they also wrote that I probably did not refer to the materials, because when the invigilator walked into me, the materials were aboveboard on my desk. I should have taken the initiative to give them to the teacher when she came over, but after I really started the exam, I was so nervous that I just stared at the computer screen to pass the exam and completely forgot about it.'

DECISIONS ON ALLEGATIONS AND REASONS

22. The Committee considered the documents before it, the evidence of Miss Du, the submissions of both parties and the advice of the Legal Adviser. ACCA called no oral evidence. 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. However, where a student is found to be in possession of unauthorised material during an exam, which is relevant to the syllabus in question, the burden is reversed and the student is presumed to have intended to use the material to gain an unfair advantage, unless the contrary is proved by them (Exam Regulation 7(a)).

Allegation 1(a)

23. Miss Du admitted Allegation 1(a), and the Committee found it proved on the basis of that admission.

Allegation 1(b)

24. By virtue of her admission to Allegation 1(a), Miss Du admitted that the notes were hers, and that she was not authorised to have them with her in the exam. The Committee was satisfied, both on the basis of the Examiner's report and Miss Du's own admission that the notes were relevant to the

syllabus and to the examination Miss Du was taking. Indeed, Miss Du accepted the very reason she had them with her was so she could revise on the way to the examination.

25. Therefore, in respect of Allegation 1(b), the issue the Committee had to determine was whether Miss Du had discharged the burden on her, under Exam Regulation 7(a).
26. Miss Du told the Committee that she was nervous about the examination which she had failed on a previous occasion. She was still doing revision, even shortly before the exam, and she put the notes, folded into four, in her pocket. Before entering the exam room, the Supervisor checked mainly for electronic items, and did not discover the notes in her pocket. Miss Du said that after sitting at her desk, she realised the note was in her pocket, because she felt it. This was whilst the Supervisor was making the announcements at the start of the exam. She put her hand up to attract the invigilator's attention, but there was a board obstructing her. So she put her hand down, and she decided she would wait until the Invigilator came near to where she was sitting and then attract her attention.
27. Miss Du also told the Committee she took the notes out of her pocket and put them on her desk. She said she did not try to hide them. They were there from the start of the exam until found by the Supervisor about an hour-and-a-half later. She told the Committee that once she started writing the exam she completely forgot about the note.
28. ACCA submitted that it was not until a month after the examination that Miss Du gave the explanation which she now relies on, namely that she was trying to give the note to the Supervisor. Mr Jowett pointed out that the notes were in very condensed form, which would not be necessary if they were merely an aide to revision. He pointed out that when Miss Du completed her SCRS 2B form on the day of the exam, she appeared to be denying that the notes were relevant to the examination.
29. Mr Jowett pointed out that in answer to questions, Miss Du said she became aware the note was in her pocket whilst the Supervisor's announcements were being made, and therefore before the exam started. It was, he submitted, surprising that she was not able to attract the Supervisor or the invigilator's attention at that stage. It was not credible, he contended, that if

she had placed this note on her desk at the start of exam, it would not have been noticed for some 90 minutes.

30. The Committee considered Miss Du was consistent in her evidence. However, the Committee had difficulty in accepting a number of aspects of her account. It did not accept, given what it was told about the layout of the exam room and the appearance of the notes (the original of which it saw), that these notes could have been on her desk for 90 minutes un-noticed. Further, on occasion, Miss Du seemed to be trying to deflect the blame by saying, for example, the Invigilator should have searched her pockets, and suggesting that she may not have been present when an announcement was made to the students to check their pockets. Further, it was far from clear to the Committee how this particular sheet of notes had been separated from her other revision notes, which she left in her bag, and how she could have managed to take them into the exam in her pocket without realising it.
31. Furthermore the Committee was not convinced that Miss Du would have failed to get the attention of the supervisor for 90 minutes if she had really wanted to. Miss Du was an experienced ACCA exam candidate. If she had realised right at the start of the exam she had made a genuine mistake, she would have been so concerned that she would have made a greater effort to alert the Invigilator. The Committee could not accept that, having taken them from her pocket and put them on her desk, she could have become so distracted by the exam that she completely forgot about them. On balance, the Committee did not find Miss Du's explanation sufficient to discharge the burden of proof.
32. The Committee was, therefore, not satisfied that Miss Du had discharged the burden on her. She had not proved, on the balance of probabilities, that she did not intend to use the notes during the exam.
33. The Committee accordingly found Allegation 1(b) proved.

Allegation 1(c)(i)

34. The Committee was satisfied that bringing revision notes in to an exam room, with the intent to gain an unfair disadvantage, would be regarded as dishonest by ordinary and reasonable members of the public. Furthermore, Miss Du must have realised she was acting dishonestly. The Committee

found that Miss Du's actions were dishonest, and therefore Allegation 1(c)(i) was proved.

Allegation 1(c)(ii)

35. The Committee was in no doubt that cheating, or attempting to cheat in an examination, is a breach of the Fundamental Principle of Integrity. The Committee accepted the advice of the Legal Adviser that a finding that the Fundamental Principle of Integrity has been breached is tantamount to a finding of dishonesty. It therefore, found Allegation 1(c)(ii) proved.

Allegation 1(d)

36. Bringing notes into an exam in order to cheat brings discredit to Miss Du. This fell seriously below the standards expected of a student member of ACCA. The Committee, therefore, found Miss Du's actions amounted to misconduct and found Allegation 1(d)(i) proved.
37. As Allegation 1(d)(ii) is an alternative to Allegation 1(d)(i) there was no need for the Committee to consider it.

ADJOURNMENT

38. There being insufficient time to conclude the hearing, particularly given the time difference between the UK and China, the Committee adjourned the hearing to a date to be notified.

RESUMED HEARING

39. The hearing resumed on 16 October 2019. The same persons were present save for the Legal Adviser, as detailed above. In addition to the papers available at the original hearing, the Committee also had a transcript from that hearing, a service bundle for the resumed hearing, numbered 1 to 9, a Costs Schedule, numbered 1 to 3, and a costs breakdown, numbered 1 to 2. Miss Du once again attended by telephone and was unrepresented. She was assisted by an interpreter.

SANCTION AND REASONS

40. In reaching its decision on sanction, the Committee took into account the submissions made by Mr Jowett, those made by Miss Du, and all matters of personal mitigation. The Committee also referred to the Guidance for

Disciplinary Sanctions issued by ACCA. The Committee had in mind the fact that the purpose of sanctions was not to punish Miss Du, 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.

41. Miss Du told the Committee that she realised that what she had done was wrong. She said, *“Although the materials were brought into the exam room, I had no intention of using them, but at the end of the day I have breached the rules of exam. In future I will make sure everything is following the exam rules.”* She went on to say that she studied hard during her university life and had three professors who were helping her to apply for a PhD course. She said she was hoping to have the opportunity to pursue her studies, which she confirmed were related to accountancy.
42. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.
43. The Committee considered the following aggravating feature: a lack of insight, as demonstrated by her continued denial that she had intended to use the unauthorised material.
44. The Committee considered the following mitigating factors: no previous disciplinary matters, albeit in a short association with ACCA; a degree of remorse, although tempered by a continued denial of dishonesty; a genuine apology to ACCA for being the cause of this hearing.
45. The Committee considered all the options available from the least serious upwards, and concluded that the only appropriate and proportionate sanction was removal from the student register. Intending to cheat in an accountancy exam in order to gain a qualification upon which the public will rely, is very serious, fundamentally incompatible with being a student of ACCA, and undermines the whole examination process. The Committee acknowledged the impact this decision would have on Miss Du, and thought it was unfortunate that she had decided to cheat after having successfully passed a number of ACCA exams. However, this intentional conduct was such a serious breach of bye-law 8 that no other sanction would adequately reflect the gravity of her offending behavior; honesty and integrity go to the heart of the profession.

46. The Association provides specific guidance on the approach to be taken in cases of dishonesty, which applies to both members and students. In Part E2 of the guidance, it states that dishonesty is said to be regarded as a particularly serious matter, even when it does not result in direct harm and/or loss, or is related to matters outside the professional sphere, because it undermines trust and confidence in the profession. The guidance makes it clear that the courts have consistently supported the approach to exclude members from their professions where there has been a lack of probity and honesty, and that only in exceptional circumstances should a finding of dishonesty result in a sanction other than striking off. The guidance also states that the public is entitled to expect a high degree of probity from a professional who has undertaken to abide by a code of ethics. The reputation of ACCA and the accountancy profession is built upon the public being able to rely on a member to do the right thing in difficult circumstances. *“It is a cornerstone of the public value which an accountant brings.”*
47. The Committee bore in mind these factors when considering whether there was anything remarkable or exceptional in Miss Du’s case that warranted anything other than removal from the student register. The Committee was of the view that there were no exceptional circumstances that would allow it to consider a lesser sanction.
48. The Committee also considered that a failure to remove a student from the register, who had a crib sheet with the clear intention of cheating during one of her accountancy exams, 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 behavior would not be tolerated.
49. The Committee therefore, ordered that Miss Du be removed from the student register. The Committee did not consider this to be a case where it was necessary to invoke Regulation 13(12), and to stipulate a longer period before Miss Du would be eligible to apply for readmission.

COSTS AND REASONS

50. ACCA applied for costs in the sum of £6,242.07. The Committee was provided with a detailed schedule of costs. Mr Jowett explained that

although the hearing had entered a second day, the costs application was for a single day. He said that no additional fixed costs were claimed in respect of the resumed hearing. The Committee was satisfied that the amount claimed was reasonable and appropriate.

51. Miss Du provided a statement of means and bank statements, which indicated that her sole source of income was from her parents, and she had very little by way of savings. Miss Du said she was studying still, and hoped to apply to do a PhD. Consequently, she could not afford to pay the costs [PRIVATE]. She asked, if the costs awarded were more than 200 euros, could she be given time to pay so that she could try to get a part-time job in order to be able to make payments.
52. Taking into account Miss Du's very limited financial means, the Committee decided it appropriate and proportionate to reduce the sum requested and to make an order in the sum of £600.

EFFECTIVE DATE OF ORDER

53. This order will have effect at the expiry of the appeal period, or at the conclusion of any appeal if one is made.

Mr James Kellock
Chairman
28 May, and 16 October 2019