

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Yunglong Wu
Heard on:	Tuesday, 10 September 2019
Location:	ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
Committee:	Mrs Judith Way (Chairman) Ms Joanne Royden-Turner (Accountant) Mrs Suzanne McCarthy (Lay)
Legal adviser:	Mr Alastair McFarlane
Persons present and capacity:	Ms Harriet Gilchrist (ACCA Case Presenter) Ms Anna Packowska (Hearings Officer)
Observers:	None
Summary:	Removal from Student Register. Cost to ACCA in the sum of £7000

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1. ACCA was represented by Ms Gilchrist. Mr Wu did not, attend and was unrepresented. The Committee had before it a bundle of papers, numbered pages 1-108, a service bundle, numbered pages 1-19, and an additional bundle, numbered pages 109-111.

SERVICE/ PROCEEDING IN ABSENCE

2. Having considered the service bundle, the Committee was satisfied that notice of the hearing was served on Mr Wu in accordance with the Complaints and Disciplinary Regulations 2014 ("CDR").
3. The Committee next considered whether it was in the interests of justice to proceed in Mr Wu's absence. The Committee accepted the advice of the Legal Adviser. The Committee was mindful that Mr Wu had right to attend the hearing and to participate, and that the discretion to proceed in his absence must be exercised with the utmost care and caution.
4. The Committee noted that ACCA's notice, dated 9 August 2019, sent to Mr Wu's registered email address, offered him the opportunity of attending via video or telephone link, with the costs being met by ACCA. Mr Wu had not availed himself of this opportunity or made any communication with ACCA about attending this hearing, until two e-mails were received by ACCA, one dated 6 September 2019, and the second dated 9 September 2019. In the first he asked to know what was happening and "*why.tell.me to.attend. the meeting*" (sic). ACCA responded to this with a reminder to attend and a further opportunity to attend via video and telephone link. ACCA made subsequent telephone calls attempting to contact Mr Wu, without success. His second response was in an e-mail, dated 9 September 2019. His email stated: "*i am so sorry Anna .Now I am in Australia this time. This time i can not attend the meeting*" (sic). He was sent a further email, dated 9 September 2019, in response asking him whether he wanted to apply for an adjournment, or whether he was content for the case to proceed in his absence. There was no response to this. The Committee was satisfied that all reasonable attempts have been made to secure Mr Wu's attendance at the hearing. The Committee was not persuaded that any adjournment would

increase the chance of Mr Wu attending or participating further in the case. On the information before it, and bearing in mind its duty to ensure the expeditious conduct of its business and the wider public interest, the Committee was satisfied that it was in the interests of justice to proceed in the absence of Mr Wu. The Committee reminded itself that his absence added nothing to ACCA's case and was not indicative of guilt.

5. ACCA made an application to amend what it contended were two typographical errors in that Allegation 1(c) (iii) should read Allegation 1(c) (ii), and that Allegation 2(b) should read "By reason of his conduct at 2(a)" and not "1(a)".
6. The Committee accepted the advice of the Legal Adviser and reminded itself that under Regulation 10(5), amendments can be made at any stage in the proceedings provided the relevant person is not prejudiced in the conduct of his defence. The Committee considered that it was careless on the part of ACCA to have made these errors, and was mindful that Mr Wu was not present to object. It was, however, satisfied from the layout of the allegations that had been sent to him that these were typographical errors and did not prejudice him.

ALLEGATIONS

Allegation 1

1. During an F4 (ENG) Corporate and Business Law computer based exam (CBE) on 22 December 2017:
 - a. Mr WU Yunlong used and/or was in possession of a device capable of taking photographs which he had at or on his desk.
 - b. Mr WU Yunlong caused and/or permitted an image or images of exam questions to be made using the device referred to at

1 a above and/or shared the said image or images on the following platforms:

- (i) Taobao Marketplace

c. Mr WU Yunlong '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 he 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 2017) in that such conduct demonstrates a failure to be straightforward and honest

d. By reason of his conduct Mr WU Yunlong 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;

Allegation 2:

2.

a. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Mr WU Yunlong has failed to co-operate fully with the investigation of a complaint in that he failed to respond fully or at all to any or all of ACCA's correspondence dated:

- (i) 20 December 2018;

- (ii) January 2019; and 14 February 2019

b. By reason of his conduct at 2(a) above, Mr WU Yunlong is:

- (i) Guilty of misconduct, pursuant to bye-law 8(a)(i); or
- (ii) Liable to disciplinary action, pursuant to bye-law 8(a)(iii).

BACKGROUND

7. On 11 December 2018, ACCA China notified ACCA Investigations that photographs of F4 Computer Based Exam (“CBE”) questions were being offered for sale on Taobao Marketplace, and a test purchase had been conducted by a local ACCA contact, Person A.
8. Further investigation by ACCA into the test purchase found that the photographs of the questions sold on Taobao Marketplace included questions from Mr WU’s F4 CBE.
9. Mr WU registered as an ACCA student on 11 September 2015.
10. In a statement, dated 11 December 2018, Person A explained that he conducted a test purchase on Taobao Marketplace. After the transaction went through on Taobao Marketplace, the seller on Taobao contacted Person A and supplied him with access to the F3 and F4 CBE questions on Baiduyun – a cloud storage service. Person A passed this information on to ACCA.
11. ACCA investigated the identity of the seller and ascertained that, in the cloud storage service a folder was found to contain F4 CBE questions with Mr WU’s ACCA’s ID number in the top right hand corner.
12. The folder was reviewed by Person B, ACCA’s CBE Delivery Manager, who explained that the student’s ACCA registration number, which enabled the student to be identified, is at the top of the screens. He also reviewed

ACCA's internal database which shows that Mr Wu sat the F4 (ENG) – Corporate and Business Law on two occasions, on 22 December 2017, and 08 January 2018. He reviewed a selection of questions against the F4 exam record of Mr Wu and confirmed that these were the same questions Mr Wu was required to answer in his F4 CBE exam on 22 December 2017.

13. Mr Wu was written to by ACCA on 20 December 2018, asking for his comments and observations in regards to this investigation and asked to respond by 18 January 2019. ACCA's letter was also e-mailed to him on the same day, to his registered e-mail address.
14. ACCA did not receive a response from Mr Wu. Chaser letters were sent to him on 21 January 2019 and 14 February 2019 to his registered postal address and registered e-mail address, but no responses were received.

ACCA SUBMISSIONS

Allegation 1(a) – Using and/or possessing an unauthorised item

15. Allegation 1(a) concerns the possession of a device capable of taking photographs by Mr Wu, during the CBE exam. ACCA assumed that the 'device' was a smart phone with a built in camera. Possession of the same would constitute a breach of Regulation 7 of the exam regulations. However, in the absence of confirmation of this from Mr Wu, ACCA accepted that the 'device' may not be expressly prohibited in the exam regulations. However, it contended that Mr Wu must have known that the possession and/or use of any type of device capable of taking photographs during an exam was prohibited and/or wrong.
16. ACCA submitted that the photographic images, which form part of ACCA's case, evidences that Mr Wu was in possession of a device capable of taking photographs when he sat his F4 CBE.

Allegation 1(b) – Mr Wu caused and/or permitted an image or images of an exam question to be made and/or shared on Taobao Marketplace.

17. Allegation 1(b) concerns the taking and sharing of the images or permitting them to be shared, as distinct from the use and possession of an item. ACCA argued that the Committee could reasonably infer from the evidence that Mr Wu, himself, must have taken images of the exam questions he saw on his computer during the exam he was sitting, and then shared or caused or permitted them to be shared on the Internet as Person A had been able to buy them on it.

Allegation 1(c) – Dishonesty and Fundamental Principle of Integrity

18. ACCA submitted that the conduct set out at Allegation 1(a) and 1(b) amounts to dishonesty on the basis of the test set out in law in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67*.
19. ACCA submitted that if the Committee does not make a finding of dishonesty, then Mr Wu had breached the Fundamental Principle of Integrity.

Allegation 2 - Failure to cooperate

20. ACCA sent postal and e-mail correspondence to Mr Wu's registered addresses, as set out under Regulation 15 of the Membership Regulations 2014. Mr Wu failed to respond to ACCA's investigation in this matter. It is therefore ACCA's submission that Mr Wu's failure to co-operate fully with ACCA's investigation into his conduct demonstrates a lack of professionalism and a disregard for ACCA's regulatory process.

Misconduct

21. ACCA contended that if any or all of the facts set out at Allegations 1 and/or 2 are found proved, Mr Wu has acted in a manner which brings discredit to himself and to the accountancy profession, and his conduct amounts to misconduct pursuant to bye-law 8(a)(i).

MR WU'S SUBMISSIONS

22. There were no submissions from Mr Wu.

DECISION ON ALLEGATIONS AND REASONS

23. The Committee accepted the advice of the Legal Adviser. The Committee reminded itself that the burden of proving the Allegations rested upon ACCA. The standard of proof to be applied throughout was the ordinary civil standard of proof, namely the 'balance of probabilities'.
24. The Committee heard that there had been no previous findings against Mr Wu, and accepted that it was relevant to put his good character into the balance in his favour.

DECISION ON FACTS

25. The Committee carefully considered all the documentary evidence it had received, as well as the submissions of Ms Gilchrist on behalf of ACCA. It reminded itself to exercise caution, as it was working from documents alone and carefully considered the weight to attach to them.

Allegation 1(a)

26. The Committee found the written evidence of Person A and Person B to be clear, credible and reliable. It was satisfied that Mr Wu had a unique ACCA registration number, and that Person B reviewed the screenshots that had been downloaded from the cloud and that had been purchased in a test purchase by Person A. These screenshots contained Mr Wu's unique registration number.
27. The Committee also noted the Information Sheet for CBE students in the bundle before it, which highlights that examinees must provide photographic identification or otherwise they cannot sit the exam. The Committee was satisfied from Person B evidence that Mr Wu sat the exam on 22 December

2017 for the first time, and that the questions shown in the screenshots, were the questions he faced on that day.

28. Further, the Committee noted from the screenshots that a shine on the screen, as well as the edge of the computer, were visible, and concluded that the photographer was most likely someone sitting directly opposite and close to the computer screen. The Committee also noted that the "time remaining" shown on each screenshot varied in each photograph, and concluded that he either directly or indirectly shared those images online. It was satisfied that this was a reasonable inference because the photographs were live photographs taken during the exam.
29. Given these findings of fact, the Committee concluded that it was a reasonable inference to draw from those facts that Mr Wu was in possession of a device capable of taking photographs which he had on his desk during the exam and which he used. Accordingly, Allegation 1 (a) is proved.

Allegation 1(b)

30. The Committee accepted Person A's evidence as credible and accurate as to the test purchases, and Person B evidence as to his review of them.
31. The Committee concluded from this evidence, which it had accepted, that it was reasonable to infer that Mr Wu took photographs of the exam questions, and shared or permitted them to be shared on the Taobao Marketplace, where Person A purchased them. The Committee was satisfied, on the balance of probabilities, that having taken the photographs during the exam, Mr Wu, directly or indirectly, shared the images online. It was satisfied that this was a reasonable inference because Mr Wu took the photographs. On the evidence before it, the Committee could not find any legitimate purpose for taking them to be plausible. It was therefore satisfied that Allegation 1(b) is proved.

Dishonesty

32. The Committee applied the test as set out by the Supreme Court in *Ivey v Genting Casinos Limited*. It specifically considered, as far as it could on the information before it, what Mr Wu's belief was as to the facts. The Committee was satisfied that the most likely explanation for covertly taking photographs of the unanswered questions shown in the screenshots, which were then found for sale online, was an intention to assist others to gain an unfair advantage. Purchasers would get insight into the type of questions asked in these exams, how they look and what to expect. The Committee rejected any possible innocent motive as implausible. The Committee had no hesitation in concluding that Mr Wu's conduct was dishonest according to the standards of ordinary decent people. Allegation 1(c)(i) was found proved. The Committee did not therefore consider the alternative under Allegation 1(c) (ii).

Misconduct in relation to 1(a) and 1(b) and/or 1(c)

33. The Committee next asked itself whether, by reason of his proved conduct, Mr Wu was guilty of misconduct.
34. The Committee had regard to the definition of misconduct in Bye-law 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Mr Wu's actions brought discredit on him, the Association and the accountancy profession. It was satisfied that illicitly and dishonestly taking photographs of exam questions for sale, with a view to assist other examinees was deplorable conduct and reached the threshold for misconduct.

Allegation 2

35. The Committee was satisfied, on the basis of the documentary evidence it had received, which it found to be credible, that, on the balance of probabilities, the documents at Allegation 2(a) were sent to Mr Wu's registered address and to his e-mail address, current at the time of sending.

It was further satisfied that Mr Wu did not respond to any of that correspondence. Considering these non-responses cumulatively, and particularly bearing in mind the serious nature of the allegation being investigated, it was satisfied that Mr Wu did not co-operate with ACCA's investigation of the complaint at all. It was therefore satisfied that Allegation 2 was proved.

Misconduct in relation to Allegation 2

36. The Committee next asked itself whether, by reason of his proved failure in Allegation 2, Mr Wu was guilty of misconduct.
37. The Committee considered the fundamental importance of regulators being able to properly investigate serious allegations against students. It was mindful that it is a fundamental duty on members of the profession to co-operate with their regulator. This is important for the protection of the public and maintaining confidence in the profession. It was satisfied that Mr Wu's repeated failures to respond to ACCA's correspondence brought discredit on him, the Association and the accountancy profession. It was satisfied that these failures reached the threshold for misconduct. In the light of its finding on Allegation 2(b)(i), no finding was needed upon Allegation 2(b)(ii).

SANCTIONS AND REASONS

38. The Committee noted its powers on sanction were those set out in Regulation 12(4). It had regard to ACCA's Guidance for Disciplinary Sanctions, and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate. It accepted the advice of the Legal Adviser.
39. The Committee considered that the dishonest conduct here was very serious. The Committee had specific regard to the public interest, and the necessity to declare and uphold proper standards of conduct and behaviour. Trust and honesty are fundamental requirements of any professional.

Dishonesty by a member of the accountancy profession undermines its reputation and public confidence in it.

40. The only mitigating factor before the Committee was:

- Mr Wu's previous good character.

41. The aggravating factors the Committee identified were:

- That Mr Wu's actions were deliberate and planned;
- The conduct involved dishonesty;
- The Committee had seen no evidence from Mr Wu of insight or understanding into the seriousness of his misconduct and its adverse impact on the standing and reputation of the profession; and
- Mr Wu has not co-operated with ACCA.

42. Given the Committee's view of the seriousness of his conduct, which included dishonesty and its detrimental effect upon the reputation of the profession; it was satisfied that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to highlight to the profession, and the public, the gravity of the proven conduct.

43. The Committee determined that Mr Wu's behaviour was fundamentally incompatible with him remaining on the student register of ACCA. The conduct involved dishonesty, and is a serious departure from professional standards. The Committee was satisfied that the only appropriate and proportionate sanction was that he be removed from the student register.

COSTS AND REASONS

44. ACCA claimed costs of £7,328.85, based on an estimated assessment of what work this case involved. The Committee decided that it was appropriate to award costs in this case, as it was properly brought, and was persuaded that the costs claimed by ACCA were justified, save for a small reduction as the case had not taken the full day as estimated. It concluded in these circumstances, that the sum of £7000 was appropriate and proportionate. Accordingly, it ordered that Mr Wu pay ACCA's costs in the amount of £7000.

EFFECTIVE DATE OF ORDER

45. This order shall take effect from the date of the expiry of the appeal period unless notice of appeal is given prior to the expiry of that period, in which case it shall become effective (if at all) as described in the Appeal Regulations. The Committee determined it was not necessary to impose an immediate order.

Mrs Judith Way
Chairman
10 September 2019