

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Miss Meichen Wang
Heard on:	Thursday, 13 August 2020
Location:	Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
Committee:	Mr Neil Dalton (Chair) Ms Fiona MacNamara (Accountant) Mr Nigel Pilkington (Lay)
Legal Adviser:	Mrs Fiona Barnett (Legal Adviser)
Persons present and capacity:	Ms Michelle Terry (ACCA Case Presenter) Ms Nkechi Onwuachi (Hearings Officer)
Observers:	None
Summary	Removal from Student Register and any future application for membership to be referred to Admissions and Licensing Committee.
Costs:	£5,000.00

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SERVICE OF PAPERS

1. Ms Wang did not attend the hearing.
2. The Committee was provided with a Service Bundle numbering pages 1 to 14.
3. The documents in the service bundle showed that the Notice of Hearing dated 15 July 2020 and a link to access the accompanying documentation were sent by email to Ms Wang's registered email address on that date. The Committee was also provided with a delivery receipt.
4. The Committee was satisfied that the hearing notice has been served in accordance with Regulations 10 and 22 of the Complaints and Disciplinary Regulations 2014 ("CDR"), amended 01 January 2020.

PROCEEDING IN ABSENCE

5. Ms Terry submitted that the Committee should proceed in Ms Wang's absence. She said that Ms Wang had voluntarily absented herself and that there was no evidence to suggest an adjournment would result in her attendance.
6. The Committee decided whether to proceed in the absence of Ms Wang. It accepted the advice of the Legal Adviser. It bore in mind that whilst it has a discretion to commence and conduct proceedings in the absence of the student, it should exercise that discretion with the utmost care and caution. The Committee had regard to the factors set out by Lord Bingham in the case of *R v Jones* 2002 UKHL 5 and the case of *General Medical Council v Adeogba and Visvardis* 2016 EWCA Civ 162.
7. The notice of hearing has been sent to Ms Wang by email and delivered to her email address; she should, therefore be aware of the hearing.
8. Ms Wang has not responded to the Notice of Hearing sent to her on 15 July 2020, nor has she responded to a follow up email sent to her by ACCA on 04 August 2020 to enquire whether she wished to attend the hearing. There has

been very limited engagement from Ms Wang during the proceedings in that she has responded to correspondence on one occasion to inform ACCA that she was unable to open a link to some documentation. In the light of Ms Wang's limited engagement, the Committee was not satisfied that Ms Wang would attend on a future occasion if the hearing did not proceed in her absence today. The Committee concluded that Ms Wang has chosen not to participate fully with this process and has voluntarily absented herself from the hearing.

9. The Committee bore in mind that there could be some prejudice to Ms Wang if the hearing proceeded today in her absence. However, it had regard to the public interest in concluding regulatory matters expeditiously and concluded that there was no good reason to adjourn the hearing. The Committee was satisfied, having balanced these factors, that it was fair and reasonable to proceed in the absence of Ms Wang. It reminded itself that it must not however draw any adverse inference from her absence.

ACCA APPLICATION TO AMEND ALLEGATION 1(a)

10. Ms Terry made an application to the Committee to amend allegation 1(a) so that the reference to "*Exam Regulation 4 and 5*" should read "*Exam Regulations 4 and/or 5.*"
11. The Legal Adviser advised the Committee that it may amend the allegation if satisfied that the amendment would not prejudice Ms Wang in the conduct of her defence, pursuant to CDR 10(5)(a).
12. The Committee decided that the proposed amendment would not prejudice Ms Wang in the conduct of her defence, and it granted Ms Terry's application.

ALLEGATIONS

Allegation 1

- (a) During a Taxation examination on 04 June 2019, Miss Meichen Wang was in possession of unauthorised materials which she had at her desk, contrary to Examination Regulations 4 and/or 5.
- (b) Miss Meichen Wang intended to use the unauthorised materials above to gain an unfair advantage;
- (c) Miss Meichen Wang's conduct in respect of 1(b) above was:
 - (i) Dishonest, in that she intended to use the unauthorised materials which she had in her possession while the exam was in progress to gain an unfair advantage; or alternatively
 - (ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2019) in that such conduct demonstrates a failure to be straightforward and honest
- (d) By reason of her conduct, Miss Meichen Wang 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

13. Ms Wang registered as an ACCA student on 08 January 2019.

14. On 04 June 2019, she attended the Jin Cheng College exam centre on to sit the Tax examination. The exam commenced at 09.00am.
15. It is alleged that during the examination at 09.54am, Ms Wang was found in possession of unauthorised materials at her desk which she allegedly intended to use to gain an unfair advantage.
16. In its consideration of this matter, the Committee had before it a bundle of papers numbering pages 1 to 64.

DECISION ON ALLEGATIONS AND REASONS

17. The Committee accepted the advice of the Legal Adviser. In reaching its decisions, it reminded itself that the burden of proof rests with ACCA, and that the standard of proof is the civil standard, which is the balance of probabilities.
18. However, the Committee also reminded itself, as advised, of Exam Regulation 7 which introduces a reverse burden of proof. This applies if ACCA proves a breach of Exam Regulation 4 and/or 5 and if the unauthorised materials are relevant to the syllabus being examined. In these circumstances, it will be assumed that the student intended to use the unauthorised materials to gain an unfair advantage in the exam unless he can prove in any disciplinary proceedings that he did not intend to do so.

Allegation 1(a) – found proved

19. The Committee had before it the completed pro-forma statements of the Exam Invigilator, (person A), and the Exam Supervisor, (person B). Both Person A and Person B stated that Ms Wang had a piece of paper, B3 size, with notes written on both sides. They confirmed that this was on her desk during the exam, and was found underneath the working paper, or “scratch” pad on her desk.
20. Ms Wang also completed a form SCRS2B following the examination. She confirmed that she was present during the taxation exam on 04 June 2019, and

stated, in relation to the notes found: *"I wrote these when I was reviewing but I don't think I'm familiar with these. I was in a hurry and didn't know what to do so I took it into examination, I'm really sorry."* Ms Wang, therefore, accepted that she was in possession of unauthorised materials which were found in her possession during the exam.

21. In the light of the evidence of Person A and Person B, together with Ms Wang's admission that she took her notes into the exam, the Committee was satisfied that Ms Wang had taken unauthorised materials to her desk and that she was in possession of these during the exam, contrary to Exam Regulations 4 and 5. It found Allegation 1(a) proved.

Allegation 1(b) – found proved

22. The Committee received an irregular script report dated 02 July 2019, in which the author confirmed that the unauthorised material was relevant to the syllabus being examined. This evidence was not challenged by Ms Wang and the Committee accepted it. Ms Wang also accepted, when she completed the SCRS2B form, that the unauthorised materials were relevant to the syllabus being examined.
23. Having found that Ms Wang's notes were relevant to the syllabus being examined, the Committee was therefore entitled to assume, by virtue of Exam Regulation 7, that Ms Wang intended to use the notes to gain an unfair advantage in the exam, unless she can prove that she did not intend to do so.
24. In the SCRS2B form which Ms Wang completed after the exam, she accepted that she had the materials with her in the exam, but that she had not looked at them during the exam and had not intended to do so. She said that she was worried about passing the exam and said, "I just brought it in...I didn't intend to use...I knew it's the wrong thing to do".
25. The Committee however did not find Ms Wang's explanation, (that she did not intend to use the materials), to be plausible for the following reasons:

- i. The Committee accepted the evidence of Person A and Person B that the material was concealed from view and placed under Ms Wang's notepad on her desk. They both made reference to her wearing a large coat which was over her keyboard, which suggests that she was deliberately trying to hide the materials and keep them with her during the exam.
 - ii. The Committee also bore in mind that the exam had been in process for 54 minutes when the unauthorised material was found. Its view was that if Ms Wang was aware that she was in possession of unauthorised material and had taken them to the exam without intending to use them, she could have handed these into the invigilator or supervisor at any time after the exam had started.
 - iii. Ms Wang's demeanour, when first spoken to by person A, was obstructive, defensive, and unhelpful. She initially was unwilling to move her notepad when requested to do so.
- 26. The Committee also had regard to evidence from the author of the irregular script report, who informed ACCA in an email dated 09 September 2019 that although the unauthorised materials were relevant to the syllabus being examined, they were not in fact relevant to the matters which appeared in the exam. Consequently, the fact that Ms Wang did not use the material did not speak to her lack of intention but could more likely be attributable to the fact that it turned out not to be relevant to the particular questions she was asked to answer. The Committee also considered it could be attributable to the fact that, according to Person A, Ms Wang was aware she was being watched.
- 27. The Committee found, when looking at the evidence as a whole, that Ms Wang had knowingly taken the material with her, had concealed it so as to make sure it was not seen by the invigilator, and had intended to use it to cheat/gain an unfair advantage over others if the opportunity had presented itself. Her account, that she was nervous about passing the exam and knew she had it but did not intend to use it, was contrary to common sense. The Committee, therefore, rejected her explanation and found that she had not discharged the

reverse burden set out in Exam Regulation 7. The Committee found Allegation 1(b) proved.

Allegation 1(c)(i) – found proved

28. The Committee then decided whether Ms Wang's actions were dishonest. In deciding this, the Committee reminded itself, as advised, of the test set out by Lord Hughes at paragraph 74 of *Ivey v Genting Casinos* 2017 UKSC 67. The Committee must first ascertain, subjectively, the actual state of the individual's knowledge or belief as to the facts. Then, once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people.
29. The Committee considered the actual state of Ms Wang's knowledge or belief as to the facts.
30. It had regard to its findings in relation to Allegation 1(b). Ms Wang knew that she had taken unauthorised materials into the exam and her intention was to conceal them, then use them to cheat and gain an unfair advantage if the opportunity presented itself.
31. The Committee was satisfied that taking notes into an exam with the intention of using them to gain an unfair advantage was behaviour which would be regarded as dishonest by the standards of ordinary decent people. The Committee therefore found Allegation 1(c)(i) proved.

Allegation 1(c)(ii)

32. In the light of its finding that Ms Wang acted dishonestly, the Committee did not consider this allegation, which was alleged as an alternative to the dishonesty allegation.

Allegation 1(d)(i) – guilty of misconduct

33. The Committee was satisfied that Ms Wang's actions were sufficiently serious to amount to misconduct. She had deliberately taken detailed notes into the examination and concealed them under her exam papers with the intention of cheating. The Committee was in no doubt that this conduct fell seriously short of the standards expected of an ACCA student, and that such conduct would bring discredit to Ms Wang, to ACCA and to the accountancy profession.

Allegation 1(d)(ii)

34. In the light of the Committee's findings that Ms Wang was guilty of misconduct, it did not consider this allegation which was laid in the alternative.

SANCTIONS AND REASONS

35. The Committee accepted the advice of the Legal Adviser who referred the Committee to ACCA's current Guidance on Disciplinary Sanctions, ("the Guidance"). It bore in mind that it must act proportionately at this stage, balancing the member's interests against the public interest, and that any sanction imposed must be no more than necessary to meet the purpose of a disciplinary sanction.
36. The Committee first considered the seriousness of the conduct found proved, before deciding upon any sanction (in accordance with paragraph E3 of the Guidance). It had regard to section F of the Guidance and decided that the misconduct in this case came under the category of Ethical Conduct. Given that the misconduct involved dishonesty, the Committee was satisfied that it could be categorised as very serious.
37. The Committee considered whether there was any aggravating and/or mitigating factors. It found that there were a number of aggravating factors. Ms Wang deliberately breached the Exam Regulations by knowingly taking unauthorised notes into the exam. She has shown no insight into her wrong doings and disengaged with the investigatory process which is likely to have prolonged ACCA's investigation.

38. The Committee also considered whether there were any mitigating factors. Ms Wang had not advanced any mitigation, nor provided any testimonials. She apologised in the SCRS2B form, but it was unclear to the Committee what she was apologising for, so it was difficult for the Committee to attach any weight to this as a mitigating factor. The Committee was told that Ms Wang had no previous ACCA disciplinary findings against her, however, the Committee attached very limited weight to this as a mitigating factor, as Ms Wang became a member of ACCA only six months before these events occurred.
39. The Committee first considered whether to conclude this case without taking further action. It decided that this would not be sufficient to uphold the public interest given the serious nature of the facts found proved against Ms Wang.
40. The Committee next considered whether an Admonishment would be an appropriate and proportionate sanction. It had regard to paragraph C2 of the Guidance. The incident was an isolated one, however, none of the other factors which would support an Admonishment applied. It, therefore, decided that an Admonishment was insufficient to reflect the serious nature of Ms Wang's dishonest behaviour.
41. The Committee next considered whether a Reprimand would be an appropriate and proportionate sanction. The Committee considered paragraph C3 of the Guidance. It was not satisfied that any of the factors which would justify imposing a Reprimand applied fully. Further, the Guidance states that this sanction is usually applied, "*...where the conduct is of a minor nature.....*". The conduct found proved involved dishonesty, which the Committee had found was very serious. The Committee, therefore, decided that a Reprimand was neither appropriate nor proportionate to address the public interest.
42. The Committee next considered a Severe Reprimand and considered paragraph C4 of the Guidance. The only factor set out in the Guidance which might support a Severe Reprimand was the fact that Ms Wang has a previous good record with ACCA. None of the other factors listed in C4 which could justify imposing a Severe Reprimand applied in this case. The Committee's view was that a Severe Reprimand was not, therefore, an appropriate sanction.

43. The Committee next considered Removal of Ms Wang's name from the student register. It considered paragraph C5 of the Guidance and also had regard to paragraph E2 which addresses cases involving dishonesty. Paragraph E2.2 states,

"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."

44. The Committee found that Ms Wang's actions amounted to a serious departure from expected standards. She had knowingly taken unauthorised materials into a professional exam and intended to use these to improve her prospects of succeeding, thereby gaining an unfair advantage for herself. She had acted dishonestly, shown no insight, and tried to conceal her misconduct from the invigilator when confronted. The Committee was satisfied that there was no evidence before it to mitigate significantly the seriousness of Ms Wang's behaviour. It concluded that her conduct was fundamentally incompatible with continued membership as a registered student.
45. Taking into account the seriousness of the case and balancing the interests of Ms Wang, the interests of ACCA and the public interest, the Committee concluded that Removal would therefore be the proportionate sanction in the circumstances of this case, and that any sanction less than Removal would not be sufficient to uphold the public interest.
46. The Committee ordered as follows:
- Ms Wang be removed from the student register;
 - Any future application for membership be referred to the Admissions and Licensing Committee, pursuant to Regulation 13(10) CDR.

COSTS AND REASONS

47. Ms Terry on behalf of ACCA applied for costs in the sum of £6,093.50.
48. Ms Wang has not provided a statement of means or any information which might assist the Committee in determining the issue of costs.
49. The Committee bore in mind that the costs were properly incurred by ACCA and the facts were found proved. The hearing had however taken less than one day (as estimated in the costs schedule), and for this reason, the Committee decided to apply a discount to the costs.
50. The Committee ordered that Ms Wang pay costs of £5,000 to ACCA, which it decided was an appropriate sum in all the circumstances.

EFFECTIVE DATE OF ORDER

51. This Order shall take effect on the date of expiry of the appeal period referred to in the Appeal Regulations.

Mr Neil Dalton
Chair
13 August 2020