

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Miss Xinyue Wu
Heard on:	Tuesday, 18 August 2020
Location:	Remotely via ACCA's offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
Committee:	Mr Maurice Cohen (Chair) Mr Trevor Faulkner (Accountant) Ms Sue Heads (Lay)
Legal Adviser:	Mr Robin Havard (Legal Adviser)
Persons present and capacity:	Ms Michelle Terry (ACCA Case Presenter) Miss Geraldine Murray (Hearings Officer)
Observers:	None
Summary	Removed from the student register
Costs:	£5,000.00

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PRELIMINARY APPLICATIONS

SERVICE OF PAPERS

1. The Committee had considered the following documents: a hearing bundle (pages 1 to 78) and a service bundle (pages 1 to 23).
2. The Committee had read the letter dated 20 July 2020 sent by ACCA by email to Miss Wu, and had noted the subsequent emails sent to Miss Wu with the necessary link and password to enable Miss Wu to gain access to documents relating to this hearing. The Committee was satisfied that such emails had been sent to her registered email address in accordance with Regulation 22 of the Complaints and Disciplinary Regulations 2014 as amended ("CDR"). The Committee had noted that the emails had been delivered successfully.
3. The emails and the documents to which Miss Wu had access also contained the necessary information in accordance with CDR10. Consequently, the Committee decided that Miss Wu had been properly served with proceedings.

PROCEEDING IN ABSENCE

4. On 10 August 2020, in the absence of any response from Miss Wu to the email of 20 July 2020, ACCA sent another email to her at the same email address asking her to respond, and reminding her of the date of hearing. As in the letter of 20 July 2020, Miss Wu was informed that she was able to join the hearing via telephone or video link. The email had been delivered successfully. However, Miss Wu did not reply.
5. On 11 August 2020, ACCA sent a further email to Miss Wu which included the link to join the hearing via skype. Again, the email had been delivered successfully but Miss Wu did not reply.
6. On 14 August 2020, a Hearings Officer of ACCA attempted on two occasions to phone Miss Wu to speak to her about the forthcoming hearing. However, on

both occasions, after several rings, the call was disconnected and there was no facility enabling the Officer to leave a message.

7. On 14 August 2020, ACCA sent a further email asking Miss Wu once more if she intended to attend the hearing or, if she was unable to attend, whether she was content for the hearing to proceed in her absence. The email was successfully delivered but Miss Wu did not respond.
8. On 17 August 2020, a Hearings Officer made one final attempt to contact Miss Wu by telephone but there was no answer and no facility to leave a message.
9. The Committee was satisfied that ACCA had done everything possible to engage Miss Wu in the proceedings but she clearly had no intention of doing so. The Committee noted that the emails had been sent to the same email address used by Miss Wu when she wrote to ACCA on 14 July 2019. It was also the same address used by ACCA when writing to Miss Wu on 11 September 2019 and 14 January 2020 to which Miss Wu failed to respond.
10. The Committee found, on the balance of probabilities, that Miss Wu had received the emails from ACCA informing her of the hearing and giving her access to the documents containing the evidence on which ACCA relied in support of the allegations. The Committee concluded that Miss Wu had voluntarily absented herself from the hearing which she could have joined by telephone or video link if it was not possible for her to attend in person. She had, therefore, waived her right to attend.
11. The Committee was also satisfied that, taking account of the seriousness of the allegations, it was in the public interest to proceed. The Committee did not consider that any benefit would be derived in adjourning the hearing and no such application had been made. Finally, the Committee considered that it was in a position to reach proper findings of fact on the written evidence presented to it by ACCA, to include the written responses provided by Miss Wu immediately after the examination and in her email of 14 July 2019.

12. The Committee ordered that the hearing should proceed in the absence of Miss Wu.

ALLEGATIONS

Allegation 1

- (a) During a Financial Management examination on 07 June 2019, Miss Xinyue Wu was in possession of unauthorised materials which she had at her desk, contrary to Examination Regulations 4 and/or 5.
 - (b) Miss Xinyue Wu intended to use the unauthorised materials above to gain an unfair advantage, pursuant to Examination Regulation 7(a);
 - (c) Miss Xinyue Wu'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 Xinyue Wu 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.
13. Whilst Miss Wu had made certain admissions in her responses to ACCA in the course of its investigations, she had not made any formal admissions to the

allegations made against her. The Committee, therefore, approached each allegation as if it had been denied.

DECISION ON FACTS/ALLEGATIONS AND REASONS

Allegation 1(a)

14. In reaching its findings in respect of this Allegation, the Committee relied upon the written evidence provided by: the Invigilator, who found unauthorised materials in Miss Wu's possession when sitting the examination; the Supervisor; the Script Examiner, and finally, the written accounts of Miss Wu.
15. On 03 July 2018, Miss Wu became registered as an ACCA student.
16. On 07 June 2019, Miss Wu attended the Financial Management examination ('the exam') at Centre C850/3; the exam was supposed to commence at 9 a.m. but for certain students including Miss Wu, due to technical issues, the exam commenced at 9:28 a.m. It was due to last 3 hours.
17. At 11.03 a.m., the Invigilator found Miss Wu in possession of a prepared note which was located under the scrap paper on Miss Wu's desk. The Invigilator had considered that the scrap paper looked unusual and that led her to look underneath it, leading to the detection of the prepared note. The Invigilator took possession of it and handed it to the Supervisor.
18. The material found on Miss Wu's desk underneath the scrap paper was subsequently handed to a Script Examiner who concluded that the content of the material was directly relevant to the exam being sat by Miss Wu, namely Financial Management, *"because it consists of a wide range of Financial Management formulae."*
19. In the form SCRS 2B completed by Miss Wu following the discovery of the document on her desk, she accepted that the document was unauthorised and that the content was relevant to the material being examined.

20. On this basis, the Committee found the facts of Allegation 1(a) proved.

Allegation 1(b)

21. All candidates for ACCA examinations are made aware of the Examination Regulations as follows:

- Prior to an examination, all candidates receive an attendance docket which, on the reverse side, contains the ACCA Guidelines and Regulations;
- Before an examination commences, the Supervisor's announcements draw candidates' attention to the Regulations and Guidelines outlined in the enclosures sent with the attendance docket. In particular, point 6 is a clear instruction to candidates to remove all unauthorised materials from their desks.

22. It was suggested by Miss Wu that she had arrived late at the examination room and had not heard the announcements being made by the Supervisor with regard to the Regulations and Guidelines. However, she would have received them in written form prior to the examination. It was also clear from Miss Wu's own account that she was well aware of the requirement not to bring in to the examination any unauthorised material.

23. Miss Wu stated in the form, *"I found the paper, I feel very scared, I know it's cheating, and I dare not tell the teacher, I put it under the scratch paper, but unfortunately, I still got caught. I think it was an honest mistake."*

24. Later, Miss Wu says that she was not trying to cheat and that she had accidentally brought the paper in to the exam. Miss Wu stated by way of explanation in response to questions 10, 11 and 12:

"No I brought it in by accident, and when the exam began, I found that I was afraid to report to the teacher after the exam started. I brought some materials

related to the exam content and I tried to hide it and hid the paper, I tried to move it around when I realised it could still be found under the scratch paper, it is why I did I look at it a few times.

I put the paper under the scratch paper, but the words will be printed on it. I tried to change its position so as not to be noticed by the prison teacher. When teacher said don't put your phone on your body or desk, I wanted to raise my hand to report to the teacher but I brought the data in by mistake. But I was afraid that the teacher thought I was deliberately brought in, directly sentenced me to cheat, hesitate, I did not raise my hand. But, after two minutes, the teacher found out the paper and told me I cheated on. I regret so much, I regret my carelessness, and I also regret that I did not report it to the teacher after I found out so that the teacher thought I was cheating. I hope you can forgive my careless mistake. Thank you."

25. In her subsequent account contained in her email to ACCA dated 14 July 2019, Miss Wu maintained that she had taken the material in to the exam by mistake. She described how she would carry out last-minute revision and she then placed the document inside her calculator cover. Ms Wu stated that this was a practice she had adopted many times in the past and that it had become a habit. However, she made a mistake on this occasion and had forgotten to remove the document from her calculator cover before entering the exam room.
26. Having found that Miss Wu was in possession of unauthorised materials during the exam, the burden of proving that she did not breach Regulation 4 and/or 5 to gain an unfair advantage in the exam rests with Miss Wu.
27. The Committee had considered carefully the explanation put forward by Miss Wu and did not find her account plausible or in any way convincing.
28. Miss Wu had taken a number of exams in the past and was, therefore, an experienced student. She knew that the document contained information which was directly relevant to the exam. She had written the information on a piece of paper which was smaller than A4. Therefore, it was more easily concealed. She had been looking at it just before she came into the examination room. She

had concealed it in her calculator cover. She would clearly make use of the calculator and she knew that she was permitted to take the calculator into the exam. It was, therefore, an obvious place to conceal a document such as the one discovered by the Invigilator. The Committee did not accept Miss Wu's evidence that, due to the confusion with regard to the start of the examination, she became nervous and forgot to remove the document from inside the calculator cover.

29. When at her desk sitting the examination, having taken the document out of the calculator cover, rather than immediately admit her mistake, Miss Wu went to considerable lengths to conceal it from the Invigilator. It was noted by the Committee that the document was only discovered over one and a half hours into the exam. Miss Wu said that she had looked at the document on a number of occasions before the Invigilator discovered it although she denied that she relied on it. Again, the Committee did not accept Miss Wu's evidence that she was scared that the Invigilator would assume that she was cheating and it was for this reason that she set about concealing the document under the scrap paper and then moving it about to carry on the deception.
30. In all the circumstances, the Committee was not satisfied that Miss Wu had proved, on the balance of probabilities, that she had not been in possession of unauthorised material in order to gain an unfair advantage in the exam.
31. On this basis, the Committee found the facts of Allegation 1(b) proved.

Allegation 1(c)(i)

32. The Committee relied upon its findings of fact under Allegations 1(a) and (b) above.
33. The Committee was satisfied that Miss Wu knew that she was not entitled to take into an exam unauthorised materials and to use such material to gain an unfair advantage. Indeed, she acknowledged in her explanation that to do so would be wrong and knew that it could amount to cheating.

34. The Committee was also satisfied that, by the standards of reasonable and honest people, such conduct would be considered to be dishonest.
35. Consequently, the Committee found Allegation 1(c)(i) proved.

Allegation 1(c)(ii)

36. On the basis that this allegation was pleaded in the alternative to Allegation 1(c)(i), the Committee made no finding in respect of it.

Allegation 1(d)(i)

37. Taking account of its findings that Miss Wu had acted dishonestly, the Committee was satisfied that Miss Wu was guilty of misconduct in that such conduct could properly be described as deplorable. In the Committee's judgement, it brought discredit to Miss Wu, the Association and the accountancy profession.

Allegation 1(d)(ii)

38. On the basis that this allegation was pleaded in the alternative to Allegation 1(d)(i), the Committee made no finding in respect of it.

SANCTION AND REASONS

39. The Committee considered what sanction, if any, to impose taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions, and the principle of proportionality. It had also listened to legal advice from the Legal Adviser, which it accepted.
40. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no order.

41. The Committee was mindful of the fact that its role was not to be punitive and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in ACCA, and to declare and uphold proper standards of conduct and performance.
42. The Committee considered whether any mitigating or aggravating factors featured in this case.
43. The Committee accepted that there were no previous findings against Miss Wu.
44. However, this was the extent of any material available to the Committee by way of mitigation. The Committee had no information regarding the personal circumstances of Miss Wu nor had it been provided with any testimonials or references as to Miss Wu's character.
45. As for aggravating features, on the basis of the findings, it had been established that Miss Wu's behaviour had been dishonest. The steps Miss Wu would have had to take involved a level of determination and premeditation. The Committee was entirely satisfied that her behaviour would undermine the reputation of ACCA and the profession.
46. The Committee concluded that neither an admonishment nor a reprimand would adequately reflect the seriousness of the Committee's findings.
47. The Committee then considered whether a severe reprimand would be an appropriate sanction. Again, taking account of the seriousness of its findings, the Committee did not consider that a severe reprimand would be sufficient or proportionate.
48. Miss Wu had been found to have acted dishonestly in her conduct. The Committee was also concerned that, based on its findings, the objective of her dishonest conduct was to gain an unfair advantage over students who had approached their exams in an honest way. She may have passed the examination when she was not competent to do so. Therefore, this was conduct on Miss Wu's part which could have led to her achieving a level of success to

which she was not entitled and which was not merited. In this way, she could present a risk to the public. It was also conduct which was fundamentally incompatible with being a student member of ACCA.

49. The Committee had considered whether there were any reasons which were so exceptional or remarkable that it would not be necessary to remove Miss Wu from the student register but could find none.
50. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Miss Wu shall be removed from the student register.

COSTS AND REASONS

51. The Committee had been provided with a bundle relating to ACCA's claim for costs (page 1).
52. The Committee concluded that ACCA was entitled to be awarded costs against Miss Wu, all allegations, including dishonesty, having been found proved. The amount of costs for which ACCA applied was £6,253.50. The Committee did not consider that the claim was unreasonable but the hearing had taken less time than estimated. Therefore, the Committee reduced the amount claimed to £5,000.00.
53. Ms Wu had not provided ACCA with any details of her means. In the correspondence sent to her, Miss Wu would have been warned at the outset of the importance of providing details of her means. In the absence of any information, the Committee had approached the issue of costs on the basis that Miss Wu was able to pay any amount awarded.
54. In all the circumstances, and in exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £5,000.00.

EFFECTIVE DATE OF ORDER

55. The Committee decided that this order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

Mr Maurice Cohen
Chair
18 August 2020