

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Miss Ruohong Gan
Heard on:	Wednesday, 12 February 2020
Location:	ACCA, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU
Committee:	Mrs Carolyn Tetlow (Chair) Mrs Fiona MacNamara (Accountant) Mrs Valerie Paterson (Lay)
Legal Adviser:	Mr David Marshall
Persons present and capacity:	Ms Harriet Gilchrist (ACCA Case Presenter) Ms Anna Packowska (Hearings Officer)
Summary:	Removed from the student register
Costs:	Miss Gan ordered to pay £2,000 towards ACCA's costs

1. The Committee heard an allegation of misconduct against Miss Gan. Miss Gilchrist appeared for ACCA. Miss Gan was not present and not represented.

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

PRELIMINARY APPLICATIONS/SERVICE OF PAPERS

2. Subject to one point, the Committee was satisfied that Miss Gan had been served with the documents required by regulation 10(7) of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 in accordance with Regulation 22. The required documents were contained in the papers before the Committee. There was evidence that they were sent by email on 09 January 2020 to an email address that Miss Gan uses. The one point of concern was that there was no evidence in the papers that this was an address that Miss Gan had notified to ACCA as an address for all correspondence, including service of notices of hearing. The screenshot of her registration details stated 'Email consent: 2'. There was no evidence in the bundle as to what code 2 meant. Miss Gilchrist said that her understanding was that it meant 'All correspondence by e-comms'. This was later confirmed by a list of codes provided by ACCA. On this basis the Committee was satisfied that there had been good service.

PROCEEDING IN ABSENCE

3. The Committee noted a number of emails from Miss Gan which showed that she was aware of today's hearing. She had indicated that she could not travel to the UK, but when offered the opportunity to attend by telephone or video link, she did not reply. She was also offered a translator. The Committee also noted that she had sent some emails asking for '*ceasing all the progress of my Disciplinary Hearings*'. This did not appear to be a request for an adjournment. Miss Gan's position appeared to be that she was reconciled to an adverse finding. If it was an application for an adjournment, no reasons were given. The Committee was satisfied that Miss Gan had chosen not to exercise her right to attend (by telephone), and that no useful purpose would be served by an adjournment. The Committee determined to proceed in her absence, taking account of her written submissions.

ALLEGATION(S)/BRIEF BACKGROUND

4. The allegations against Miss Gan were as follows:

Allegation 1

- (a) During a Financial Reporting examination on 6 December 2018, Miss Ruohong Gan was in possession of unauthorised materials while the exam was in progress, contrary to Examination Regulation 5.
- (b) Miss Ruohong Gan intended to use the unauthorised materials above to gain an unfair advantage;
- (c) Miss Ruohong Gan's conduct in respect of 1(a) – 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 2018) in that such conduct demonstrates a failure to be straightforward and honest
- (d) By reason of her conduct, Miss Ruohong Gan 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.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

5. At the start of a hearing where the relevant person is not in attendance, the Committee is required to consider the correspondence to determine whether it establishes the relevant person's wish to make any admissions. The Committee noted that Miss Gan had consistently admitted being in possession of the alleged unauthorised materials, i.e. Allegation 1(a). In an email dated 29 January 2020, she appeared to admit everything. However, in a number of previous emails, she had set out a detailed defence to the allegations of intending to gain an unfair advantage and dishonesty. The Committee made allowance for the fact that English was not Miss Gan's first language and her responses to the other allegations were inconsistent. It

concluded that it would treat her as having admitted Allegation 1(a) only. **The Committee therefore found Allegation 1(a) proved.**

6. The Committee did not hear any oral evidence. It saw three ACCA 'SCRS – Unauthorised Materials' report forms completed on the day of the examination. Two were completed by officials supervising the exam. The Invigilator reported that she saw Miss Gan looking around and she (the Invigilator) thought Miss Gan might need more paper so she approached. The Invigilator then saw Miss Gan take a tissue from under the desk, and place it on the desk. It had formulae written on it. She said Miss Gan kept the tissue in her hand and was reluctant to give it up, although eventually she did. She expanded on this in an email dated 14 February 2019. She said:

The candidate was holding the unauthorised material in her hand at that time. She moved her hand on the desk from the underneath of the desk.

... The tissue looked clean, without too much-repeated rubbing marks. Looked like it was just taken out.

... The candidate looked nervous. I asked her what it was and told her she was not allowed to bring unauthorised material to the desk, then the candidate slowly opened her palm and I got it.

7. The Exam Supervisor stated that after the Invigilator reported this incident, they took the tissue and photographed it.
8. The third form was completed by Miss Gan herself. She confirmed that she was in possession of unauthorised materials which she described as 'a tissue with formulas on it'. She admitted that they were relevant to the syllabus and briefly explained why. She said it was 'totally an accident'. She said it was her habit to write notes on anything that came to hand which is why she had written notes on a tissue. She had forgotten to check her pockets and when she went to get some tissues from her pocket for her runny nose, she found this one amongst them. She said the words on the tissue were relevant to Part C of the exam but at the time she found the tissue, about halfway through the exam, 'I had no chance to give a glance to those questions.' She denied an

intention to gain an unfair advantage.

9. Miss Gan made detailed submissions in a document described as a petition sent on 14 January 2019. She explained why she needed to write on unusual materials, such as tissues: *'in such a digital era, ... it becomes harder and harder for people to find some writing materials.'* She said that on the day of the exam she was running late and did not have time to check her belongings carefully. She said she had a cold and *'brought out a pile of paper tissues from my jacket'*. It was not until the Supervisor challenged her that she realised that there were words on the tissue. She said she had already memorised what was written on the tissue, so she had no need to bring it with her. She said, *'I swear that I didn't mean to make a such a mistake, it all happened by coincidentally'*.
10. Miss Gan provided further information in a response dated 5 March 2019. She said: *'I just brought out a pile of paper tissues from my jacket, and not until the supervisor pointed out that I had brought some illegal materials with me, I had realized that there are words on one of the tissue. I even didn't have a chance to take a glance at the tissue when all this happened.'* She said that the notes were not relevant to the exam (as opposed to being relevant to the syllabus). She said that she did not use, or intend to use, the notes to gain an unfair advantage.
11. The Committee first considered the relevance of the notes. ACCA had obtained a report which stated that the notes were relevant to both the syllabus and the particular exam. However, this was clarified in an email dated 16 February 2019. The notes could have been relevant to section A of the exam, but the questions in that section were computer generated from a bank of questions and the person reporting did not know what questions had been asked. Miss Gan had said in her SCRS form that the questions were relevant to section C of the exam. However, she later changed her position on that. The Committee accepted the expert opinion and concluded that the notes were relevant to the syllabus but not to this particular exam.
12. However, Miss Gan's answer given immediately after the exam suggested that she believed the notes were relevant to section C of the exam. If so, that

could be a reason for her to refer to them.

13. There was an issue as to whether it was one tissue or a 'pile' of tissues that Miss Gan produced. The Committee considered that the two contemporaneous reports were clear in describing a single tissue. If there had been a number of tissues, the others would have been examined and the reports would have mentioned it. The Committee therefore disbelieved Miss Gan's evidence on this point. That cast doubt on the credibility of her account more generally.
14. The Committee considered Miss Gan's explanation for why she had written notes on a tissue but found it implausible. A tissue would be quite unsuitable for recording revision notes, but would be well suited to concealment in an examination. The notes themselves seemed to be a detailed summary of a topic, closely written and not just casual jottings.
15. The Committee noted Miss Gan's statement that she did not check her pockets because she was in a rush, but in her SCRS form she stated that she had arrived at the examination at 8:30am half an hour before the exam started.
16. The Committee noted that Miss Gan had already taken several ACCA exams and would have been very familiar with the process and the rules. The evidence showed that the Exam Supervisor made an announcement before the exam which included a reminder to candidates to remove all unauthorised materials and the consequences of not doing so.
17. The Committee accepted the Invigilator's evidence that Miss Gan was reluctant to give up the tissue with the notes on it when challenged.
18. Under the Examination Regulations there was a burden on Miss Gan to prove that she did not intend to use the unauthorised material to gain an unfair advantage. Having carefully considered Miss Gan's explanations the Committee did not accept them. In fact, the Committee was satisfied, on the balance of probabilities, that Miss Gan did intend to use the notes for the reasons set out. **The Committee found Allegation 1(b) proved.**
19. The Committee had no doubt that taking notes into an exam with the intention

of using them to gain an unfair advantage was dishonest. It was cheating. **The Committee found Allegation 1(c)(i) proved.** It was not necessary to consider Allegation 1(c)(ii) as this was in the alternative.

20. The Committee was quite satisfied that as a result of her dishonesty, Miss Gan was guilty of misconduct. It brought discredit on her and on the ACCA. It was deplorable conduct. **The Committee found misconduct proved.** It was not necessary to consider whether she was liable to disciplinary action, as this was in the alternative.

SANCTION(S) AND REASONS

21. Having found that all the facts had been proved, the Committee considered what sanction, if any, to impose.
22. It first considered whether there were any aggravating or mitigating factors.
23. Any form of exam cheating is a serious matter. It is amongst the most serious types of misconduct that a student can commit. It undermines the system of professional qualification and is unfair and demoralising to other students. Miss Gan's conduct was aggravated by her denial of the allegations throughout the investigation.
24. With regard to mitigating factors, Miss Gan had no previous findings against her, but she had only been registered for a few months. She co-operated with the investigation. She expressed remorse and, in a very recent email dated 29 January 2020, she stated that she admitted her *'dishonourable behaviour'*. That may show some sign of developing insight.
25. The Committee next considered the relevant sanctions in ascending order.
26. The Guidance states that admonishment and reprimand are appropriate where 'the conduct is of a minor nature'. The dishonesty in this case was far too serious to be dealt with by these sanctions.
27. The Guidance states that the sanction of severe reprimand 'would usually be applied in situations where the conduct is of a serious nature but there are particular circumstances of the case or mitigation advanced which satisfy the

Committee that there is no continuing risk to the public, and there is evidence of the individual's understanding and appreciation of the conduct found proved'. In this case, there was minimal mitigation and any insight Miss Gan may be developing is at a very early stage. Few of the specific factors listed in the Guidance are applicable in this case.

28. The Committee next considered the sanction of removal from the student register. In this case there was a serious departure from professional standards. Miss Gan's conduct was dishonest. She demonstrated minimal, if any, insight and understanding. There was persistent denial of misconduct. The Committee was satisfied that removal from the student register was the minimum sanction it could impose.
29. The Committee considered whether it was necessary to make an order extending the period before Miss Gan could apply to be readmitted, but decided that it was not necessary.

COSTS AND REASONS

30. Miss Gilchrist applied for costs totalling £7,174. The Committee was satisfied that these proceedings were properly brought, and that ACCA was entitled in principle to a contribution to its costs.
31. With regard to the amount, the costs seemed high even given Miss Gan's persistent denials. The Committee was particularly concerned about Miss Gan's ability to pay a costs order. In her email of 29 January 2020, she said *'as a college student I could not manage to afford any cost for the hearing'*. Miss Gan had not returned ACCA's statement of means form. However, the Committee accepted that she was a student and that the Committee's findings would probably adversely affect her future earning capacity. There was no reason to think that she was a person of substantial means when judged by UK prices. Doing the best it could on limited information, the Committee assessed the costs at £2,000.

ORDER

32. The Committee ordered as follows:

- (a) Miss Gan shall be removed from the student register;
- (b) Miss Gan shall make a contribution to ACCA's costs of £2,000 (two thousand pounds sterling).

EFFECTIVE DATE OF ORDER

- 33. This order shall take effect from the date of the expiry of the appeal period referred to in the Appeal Regulations.

Mrs Carolyn Tetlow
Chair
12 February 2020