

## HEARING

### DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

#### REASONS FOR DECISION

**In the matter of:** Miss Thu Nguyen Kim

**Heard on:** Wednesday 19 February 2020

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

**Committee:** Mr Andrew Popat, CBE (Chair)  
Mr Martin Davis (Accountant)  
Mrs Jackie Alexander (Lay)

**Legal Adviser:** Mr Richard Ferry-Swainson (Legal Adviser)

**Persons present  
and capacity:** Mr Benjamin Jowett (ACCA Case Presenter)  
Ms Geraldine Murray (Hearings Officer)

**Observers:** Mr Phillip Law (ACCA Case Presenter)

**Summary:** Facts and misconduct found proved, student removed  
from the Register, costs ordered.

## **PRELIMINARY APPLICATIONS/SERVICE OF PAPERS**

1. The Disciplinary Committee (“the Committee”) convened to consider an Allegation against Miss Thu, who was not present or represented.
2. The papers before the Committee were in a bundle numbered 1 to 145 and a costs schedule numbered 1 to 4. The Committee was also provided with a Service Bundle numbered 1 to 23.
3. Mr Jowett made an application to proceed in the absence of Miss Thu.

## **SERVICE AND PROCEEDING IN ABSENCE**

4. The Committee first considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (“the Regulations”). The Committee took into account the submissions made by Mr Jowett on behalf of ACCA, and also took into account the advice of the Legal Adviser.
5. Included within the service bundle was the Notice of Hearing dated 21 January 2020, thereby satisfying the 28 day notice requirement, which had been sent to Miss Thu’s email address as it appears in the ACCA register. The Notice included details about the time, date and venue for the hearing, and also Miss Thu’s right to attend the hearing, in person or by telephone, and to be represented, if she so wished. In addition, the Notice provided details about applying for an adjournment, and the Committee’s power to proceed in Miss Thu’s absence, if considered appropriate.
6. The Committee was satisfied that the Notice had been served in accordance with the Regulations, which require ACCA to prove that the documents were sent, not that they were received. Having so determined, the Committee then considered whether to proceed in Miss Thu’s absence. The Committee bore in mind that although it had a discretion to proceed in the absence of Miss Thu, it should exercise that discretion with the utmost care and caution, particularly as Miss Thu was unrepresented.

7. The Committee noted that Miss Thu faced serious allegations of dishonesty, and that there was a clear public interest in the matter being dealt with expeditiously. Miss Thu completed a Case Management Form on 15 September 2019. In it, she indicated that she would not be attending the hearing, nor would she be represented. She also ticked the box to say she consented to the hearing proceeding with the case in her absence. The Committee considered, therefore, that an adjournment would serve no useful purpose, because it seemed unlikely that Miss Thu would attend on any other occasion. In light of the indications she had given in the Case Management Form, the Committee concluded that Miss Thu had voluntarily absented herself from the hearing, and thereby waived her right to be present and to be represented at this hearing.
8. In all the circumstances, the Committee decided that it was in the interests of justice that the matter should proceed, notwithstanding the absence of Miss Thu. No adverse inference would be drawn from her non-attendance.

#### **ALLEGATION/BRIEF BACKGROUND**

9. Miss Thu faced the following Allegation:

##### Allegation 1

- (a) During a Performance Management examination on 05 December 2018, Miss Thu Nguyen Kim was in possession of unauthorised materials while the exam was in progress, contrary to Examination Regulation 5.
- (b) Miss Thu Nguyen Kim intended to use the unauthorised materials above to gain an unfair advantage;
- (c) Miss Thu Nguyen Kim'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 2018) in that such conduct demonstrates a failure to be straightforward and honest.

(d) By reason of her conduct, Miss Thu Nguyen Kim 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.

10. Miss Thu first became registered as an ACCA student on 12 June 2017.

11. On 05 December 2018, Miss Thu attended the Performance Management examination ("the exam") at Hanoi University of Science & Technology. The exam commenced at 9.00am and was due to last a total of three and a half hours.

12. 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 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 5 is a clear instruction to candidates to remove all unauthorised materials from their desks.

13. Person A ("the Invigilator"), who was supervising Miss Thu's exam, completed an SCRS 1B form following the exam. The form described how the Invigilator escorted Miss Thu to the toilet whilst the exam was ongoing. The Invigilator stated:

*'When I escorted the candidate to the toilet and waited outside, I heard the noise of using paper inside. When she got out, I asked her if she had read any unauthorised materials but she denied doing so. As I could see a part of her dress was abnormal, I requested her to show me what was kept inside her dress, and that's the notes...I confiscated the materials and inform the candidate that this violation will be reported to ACCA.'*

14. The form stated that the materials were found at 11.24am, approximately an hour before the exam was due to finish. The Invigilator added that when the student was found with the materials, *'She refused that she brought the documents but when we found the documents inside her dress, she accepted'*. The Invigilator described the notes as being *'hidden inside her [Miss Thu's] dress.'* The Invigilator said she confiscated the material, and informed Miss Thu that she would be reported to ACCA. Miss Thu is said to have asked the Invigilator to *'forgive her violation.'*

15. In subsequent correspondence with ACCA, the Invigilator confirmed

*'There was no one else using the toilet at the time. The toilet was located in a separate area and was quiet enough to hear what the student was doing inside the toilet cubicle... I heard the sound of paper, it's like opening some notes. I heard it after the students came into the toilet cubicle for about 1-2 minutes...[and] The student hid the material at the bottom of her skirt, at the back.'* (sic)

16. The pages found in Miss Thu's possession consisted of 55 pages, containing diagrams, typed text and hand-written text. On 30 December 2018, a Script Examiner ("the Examiner") completed an Irregular Script Form and confirmed that the materials were relevant to the exam syllabus and to the particular examination Miss Thu had been sitting. The Examiner was unable to say whether the notes had actually been used during the exam.
17. After the Exam, Miss Thu completed the SCRS 2B form, in which she provided information about the incident; these answers were later clarified by the Investigations Department:

- Miss Thu confirmed that she had been present for the Supervisor's announcements, that she had her examination attendance docket and that she had read the docket and the Examination Regulations;
  - She said on the form that she had placed her personal belongings in '*my pocket*';
  - When asked whether she was in possession of unauthorised materials while the exam was in progress, Miss Thu answered '*No, I only keep in my body...*';
  - Miss Thu said the unauthorised materials were '*relevant to syllabus being examined, but it is long, I don't have time to check.*';
  - She said that the purpose for which she had the unauthorised materials in her possession were '*when I do before exam, I check again but I forgot it in my pocket.*';
  - In answer to the question '*Please confirm whether you used the unauthorised materials that were found in your possession, providing an explanation for your answer*' Miss Thu wrote, '*No, it is the first time.*';
  - Miss Thu denied intending to gain an unfair advantage from the unauthorised materials.
18. On 09 January 2019, ACCA's Exams department wrote to Miss Thu requesting her comments in relation to the incident. On 14 January 2019, Miss Thu responded stating, "*I am sorry for this issue. I know my conduct in breaching the ACCA's regulation. I commit not to make it for next time.*'
19. On 13 February 2019, ACCA's Investigations Department wrote to Miss Thu to advise her of the complaint which had been received, and requested clarification of the responses she had provided in her SCRS 2B form.

20. On 14 February 2019, Miss Thu responded by way of an email stating:
- a. I confirm that the notes which was took into the Performance Management examination on 5 December 2018 are shown at pages 2 – 57 of the bundle*
  - b. I confirm that the notes were in my pocket throughout the exam until they were found by the Invigilator. I put it before exam for reading again before exam, but when I took exam, I forgot it and bring it during exam.*
  - c. I were a cost, so I can bring quite a large number of note*
  - d. I have acknowledged that I had the notes with you in your pocket in my SCRS 2B form (pades 66-69) and I agreed with the account being told*
  - e. The authorised material is relevant to the syllabus being examined. But material is so many, therefore I can't read all or intended to use it during exam' (sic).'*

#### **DECISION ON FACTS/ALLEGATION AND REASONS**

21. The Committee considered with care all the evidence presented and the submissions made by Mr Jowett. The Committee accepted the advice of the Legal Adviser, and bore in mind that it was for ACCA to prove its case and to do so on the balance of probabilities.
22. Miss Thu had sat a number of ACCA exams in the past and so would have been familiar with what materials she could take into an exam. In addition, she would have been given clear instructions at the start of this exam about what material was prohibited during an exam. Furthermore, she accepted that she had read the Examination Regulations. Accordingly, the Committee was satisfied that Miss Thu would have known what material she was not allowed to take into the exam.
23. The Committee noted that in the SCRS 2B form, Miss Thu had admitted taking the material into the exam, but claimed that it was by mistake and not with any

intention to cheat. In her correspondence with ACCA, she always accepted that she had taken the materials into the exam and thereafter had them in her possession during the exam. In light of this acceptance, and the unchallenged evidence of the Invigilator, the Committee found, as a matter of fact, that she had been in possession of the material seized.

24. The examiner's evidence in relation to the PM exam was that the material they were shown was relevant to the syllabus and the particular exam, although they could not say whether it had been used. Miss Thu agreed that the material was relevant to the syllabus and the exam she was sitting. In light of this evidence, together with the evidence of Miss Thu's possession of the material during the exam, the Committee was satisfied that she was in possession of unauthorised material during the exam. The Committee decided, therefore, that Miss Thu had breached Examination Regulation 5, which prohibits a candidate from taking unauthorised material to their desk. Accordingly, the Committee found Allegation 1(a) proved.
25. By applying the assumption in Examination Regulation 7, the Committee was satisfied, on the evidence, that Miss Thu intended to use the unauthorised materials whilst the exam was in progress. The Committee reached this conclusion on the basis of the type, and extensive nature, of the material she had taken into the exam, together with her behaviour, as described by the Invigilator, who heard the rustling of paper whilst Miss Thu was in the toilet cubicle. In the Committee's view, Miss Thu had not discharged the burden of proving that she did not intend to use the material to gain an unfair advantage in the exam. The Committee did not accept Miss Thu's written assertions that she had taken the unauthorised material into the exam by mistake, and had not intended to use it. This account conflicted with the evidence of the Invigilator, and the actions described, and where the material was placed. Furthermore, Miss Thu had around 67 pages of material, reduced in size and in 4 separate stapled bundles. This was a significant amount, and it was not plausible to suggest she was unaware of this, and had taken it into the exam by mistake. Students are given every opportunity to ensure they have no unauthorised material in the exam, and had Miss Thu taken the material in by mistake, she would have realised at the time and been able to do something about it. The Committee considered there to have been an element of planning in preparing



these notes that demonstrated that Miss Thu knew full well what she was doing. In all the circumstances, the Committee found Allegation 1(b) proved.

26. The Committee then considered whether the behaviour was dishonest. The Committee could not envisage any circumstances where cheating, or intending to cheat, in an exam could be anything other than dishonest. It is done in order to gain an unfair advantage over other students, and to assist the participant to pass the exam in circumstances where they might otherwise fail or get a lower mark. The Committee therefore found Allegation 1(c)(i) proved.
27. Having found Allegation 1(c)(i) proved it was not necessary for the Committee to consider Allegation 1(c)(ii), which was in the alternative.
28. Cheating, or attempting to cheat, in an exam brings discredit on Miss Thu, the Association and the accountancy profession as a whole, and is clearly an act which falls seriously short of what is to be expected of student members. The Committee was in no doubt that it amounted to misconduct. Accordingly, the Committee found Allegation 1(d)(i) proved.
29. Having found Allegation 1(d)(i) proved it was not necessary for the Committee to consider Allegation 1(d)(ii), which was in the alternative.

## **SANCTION AND REASONS**

30. In reaching its decision on sanction, the Committee took into account the submissions made by Mr Jowett. Miss Thu had not attended, nor had she provided any personal mitigation for the Committee to take into account. The Committee referred to the Guidance for Disciplinary Sanctions issued by ACCA, and had in mind the fact that the purpose of sanctions was not to punish Miss Thu, 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.
31. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.

32. The Committee considered the following aggravating features: the degree of planning in producing such comprehensive crib sheets, undermining of the integrity of ACCA's examination process, conduct motivated by personal gain, potential for harm to the public by her passing an examination that she might otherwise not have passed, which meant she would not have been properly qualified had she evaded detection, and a lack of insight.
33. The Committee did not consider there to be any significant mitigating factors and Miss Thu had not suggested any. Although she had expressed some remorse, it was not entirely clear what she was apologising for. Nevertheless, the Committee took this into account. The Committee noted that she had no previous disciplinary record with ACCA, but this carried little weight because she had acted dishonestly early in her association with ACCA.
34. The Committee considered all the options available from the least serious upwards. It noted that the Association provides specific Guidance on the approach to be taken in cases of dishonesty. 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 states 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."*
35. The Committee bore in mind these factors when considering whether there was anything remarkable or exceptional in Miss Thu'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, 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 an unfair advantage and a qualification upon which the public will rely, is very serious, and fundamentally incompatible with being a student of ACCA.

36. The Committee acknowledged the impact this decision would have on Miss Thu, 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 behaviour. Honesty and integrity go to the heart of the profession. The Committee considered that a failure to remove a student from the register who had created sophisticated crib sheets 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 behaviour would not be tolerated.
37. The Committee therefore ordered that Miss Thu be removed from the student register.

### **COSTS AND REASONS**

38. ACCA applied for costs in the sum of £7,451.50. The Committee was provided with a schedule of costs. The Committee was satisfied that the costs claimed were generally appropriate and reasonable, except for the estimates for the Case Presenter and Hearings Officer for today's hearing which, in the event, took less than a full day. In addition, Mr Jowett indicated that as two cases had been listed today, the hearing costs could be halved to reflect this, and the Committee agreed. Miss Thu did not provide any details of her means or provide any representations about the costs requested by ACCA; there was, therefore, no evidential basis upon which the Committee could make any reduction on that ground.
39. In light of its observations above, the Committee reduced the amount requested to reflect the actual costs more likely to have been incurred, and made an order in the sum of £4,300.

#### **EFFECTIVE DATE OF ORDER**

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

**Mr Andrew Popat, CBE**  
**Chair**  
**19 February 2020**