

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Hu Yiwen

Heard on: Tuesday, 03 September 2019 & Wednesday, 08 and
Thursday, 09 January 2020

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

Committee: Mrs Lubna Shuja (Chair)
Mrs Judith Glover (Accountant)
Mr John Walsh (Lay)

Legal Adviser: Mr Robin Havard (Legal Adviser)

Persons present

and capacity: Mr Mohammed Ismail on 03 September 2019, and Ms Harriet
Gilchrist on 08, and 09 January 2020 (ACCA Case Presenters)
Ms Anna Packowska (Hearings Officer)
Ms Hsin-Yi Cheng on 03 September 2019, and Ms Min Xu on
08, and 09 January 2020 (Interpreters)
Miss Hu Yiwen (Student member – by telephone)

Summary: Removal from Student Register

Costs: £750.00

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PRELIMINARY APPLICATIONS

APPLICATION TO AMEND ON 3 SEPTEMBER 2019

1. Mr Ismail applied to amend the allegations. The amendments amounted to the correction of two typographical errors. The first related to changing Allegation 1(c)(iii) to 1(c)(ii). The second related to Allegation 2(a) which currently reads, "She failed to respond at all to any to all of ACCA's correspondence...". Mr Ismail applied to amend the allegation so that it reads, "She failed to respond at all to any or all of ACCA's correspondence...".
2. Miss Hu did not object to the applications.
3. The Committee allowed the applications on the basis that they amounted to typographical errors and the amendments would cause no prejudice to Miss Hu, as they did not change the case against her in any way.

FURTHER APPLICATION TO AMEND ON 08 JANUARY 2020

4. On the morning of 08 January 2020, Ms Gilchrist made an application for the allegations to be further amended. Miss Hu was provided with a copy of the proposed amendments prior the start of the hearing on 08 January 2020.
5. The application was being made in light of what Miss Hu had said in an email sent to ACCA on 18 December 2019. That email had not been brought to the attention of the Case Presenter until late yesterday afternoon. Therefore, this was the first opportunity to make the application.
6. ACCA wished to amend the allegations by deleting the words struck through and adding the words which were underlined.

Allegation 1

1. During an F4 (ENG) Corporate and Business Law computer-based exam (CBE) on 20 December 2017:

a. Miss Hu Yiwen used and/or was in possession of a device capable of taking photographs which she had at or on her desk.

b. Miss Hu Yiwen 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 Market Place.~~

c. Miss Hu Yiwen'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 she intended to assist another/ other exam entrants to gain an unfair advantage; or in the alternative~~
Dishonest in that she gained an unfair advantage for herself in the examination; 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 her conduct Miss Hu Yiwen 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. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Miss Hu Yiwen has failed to co-operate fully with the investigation of a complaint in that:

a. She failed to respond to any or all ACCA's correspondence dated:

(i) 20 December 2018;

(ii) 21 January 2019; and

(iii) 14 February 2019;

b. By reason of her conduct in respect of any or all of the matters set out at 2(a) above, Miss Hu Yiwen is:

(i) Guilty of misconduct, pursuant to bye-law 8(a)(i);

(ii) Liable to disciplinary action, pursuant to bye-law 8(a)(iii).

7. Having considered the amendments, Ms Hu confirmed that she did not object to the application.
8. The Committee found that there was no prejudice to Miss Hu as the amendments were being made to reflect what was said by her in her email of 18 December 2019. The email was the first occasion on which Ms Hu had made her position clear.
9. The Committee was satisfied that it was in the public interest to amend the allegations as proposed. It meant that the allegations would better reflect the evidence now before it and would narrow the case against Ms Hu. The application to amend the allegations in the manner set out was granted.

ALLEGATIONS

1. During an F4 (ENG) Corporate and Business Law computer-based exam (CBE) on 20 December 2017:
 - a. Miss Hu Yiwen used and/or was in possession of a device capable of taking photographs which she had at or on her desk.
 - b. Miss Hu Yiwen caused and/or permitted an image or images of exam questions to be made using the device referred to at 1 a above

c. Miss Hu Yiwen'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 she gained an unfair advantage for herself in the examination; 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 her conduct Miss Hu Yiwen 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.

2. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Miss Hu Yiwen has failed to co-operate fully with the investigation of a complaint in that:

a. She failed to respond at all to any or all of ACCA's correspondence dated:

- (i) 20 December 2018;
- (ii) 21 January 2019; and
- (iii) 14 February 2019;

b. By reason of her conduct in respect of any or all of the matters set out at 2(a) above, Miss Hu Yiwen is:

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

DECISION ON FACTS, ALLEGATIONS AND REASONS

10. The Committee had considered the following documents when reaching its decisions in these proceedings: ACCA's bundle (pages 1-126), Additional bundle (1) (page 127), Tabled Additional (1) (pages 1-35), Tabled Additional (2) (pages 1-4), a Service bundle (1) (pages 1-19) and Service bundle (2) (page 20). It had listened to the outline of ACCA's case as described by Mr Ismail and then Ms Gilchrist. It had considered the witness statements and exhibits of Person A and Person C. It had also listened carefully to the submissions of Ms Hu.

Allegations 1a and b

11. Miss Hu admitted the facts of Allegations 1(a) and 1(b) and the Committee found them proved.
12. The Committee made the following additional findings of fact.
13. Miss Hu Yiwen registered as an ACCA student on 22 May 2017.
14. On 20 December 2017, Miss Hu sat exam F4.
15. In or about April 2018, ACCA China became aware that photographs of the F4 exam paper were appearing on the internet on a platform called Taobao Marketplace, an online shopping site.
16. The Committee found that, on 28 April 2018, a test purchase had been conducted by a local ACCA contact, Person A, who was a teaching assistant employed by ACCA China.
17. Once the transaction had been processed on Taobao Marketplace, the seller contacted Person A and supplied him with access to the F3 and F4 CBE questions on Baiduyun, a cloud storage service. The Taobao Marketplace confirmation of purchase was supplied to Person A, who took a screen shot of the transaction.
18. On 11 December 2018, ACCA China notified ACCA's Investigations Department that F4 CBE questions were being offered on sale on Taobao Marketplace.
19. Person A provided the information, to include the screen shot of the transaction, to an ACCA Investigations Officer. The information included the seller's name: Person B.

ACCA's Investigations Officer ran the name Person B into ACCA's database and no result returned.

20. The Investigations Officer also reviewed the exchange where Person A was provided with access to the F3 and F4 CBE questions on Baiduyun. The screen name of the person who contacted Person A was Person C. The Investigations Officer ran the name Person C into ACCA's database and, again, no results were returned.
21. The Investigations Officer was given access to Baiduyun by ACCA China and he reviewed the contents of the Baiduyun folder Person C had supplied to Person A. A folder was found to contain F4 CBE questions and Miss Hu Yiwen's discrete ACCA ID number appeared in the top right-hand corner. The contents of folder F4真题2 were downloaded by the Investigations Officer and forwarded to Person C ACCA's CBE Delivery Manager, to review.
22. Folder F4真题2 contained fifty-six (56) jpg image files, copies of which were provided to the Committee.
23. Person C reviewed a sample of these files. He also reviewed ACCA's internal database and a selection of questions from Section A of the F4 (ENG) – Corporate and Business Law exam.
24. The Committee had considered the sample and accepted the findings of Mr Mackenzie made in the course of his review. The Committee therefore found as follows:
 - a. Miss Hu's ACCA registration number was at the top of the screens which had been photographed and which enabled Miss Hu to be identified;
 - b. This also meant that the licensed on-demand centres could be identified, as ACCA's internal databases enabled the location of all centres at which students attempt their exams to be identified;
 - c. The header also showed the CBE exam sat was F4(ENG) – Corporate and Business Law;
 - d. The student registration number was the ACCA registration number of Miss Hu;

- e. ACCA's internal database showed that Miss Hu sat the F4 (ENG) – Corporate and Business Law on 20 December 2017;
 - f. A comparison of a number of questions from folder F4真题2 and Section A, with the F4 exam records of Miss Hu, confirmed that these were the same questions Miss Hu was required to answer in her F4 CBE exam on 20 December 2017.
25. On the basis of its findings of fact, the Committee was satisfied, on the balance of probabilities, that Miss Hu had been in possession of, and used, a device capable of taking photographs when she was sitting her F4 (ENG) Corporate and Business Law computer based exam (CBE) on 20 December 2017. Indeed, she had admitted this.
26. On this basis, and on Miss Hu's admission, the Committee found Allegation 1(a) proved.
27. On the basis of its findings under Allegation 1(a) above, the Committee also found, on the balance of probabilities, that Miss Hu had caused images of exam questions to be made using the device referred to at 1(a) above. Indeed, Miss Hu had admitted taking those photographs to pass to a third party during the exam.
28. On this basis, and on Ms Hu's admission, the Committee found Allegation 1(b) proved.

Allegation 1(c)(i)

29. Ms Hu admitted this allegation, and the Committee found it proved.
30. The Committee relied upon its findings of fact under Allegation 1 above.
31. It was not until 18 December 2019, that Miss Hu sent an email to ACCA providing a substantive response to the allegations.
32. It was as a consequence of the content of that email which led ACCA to revise the basis on which it put its case against Miss Hu. It was accepted by Ms Gilchrist that it would no longer be appropriate to allege that Miss Hu had been dishonest, on the basis that she intended to assist other exam entrants to gain an unfair advantage by having advance sight of the F4 exam questions. In other words, it was no longer alleged that

Miss Hu had conspired with others to advertise the sale of those questions on the internet. Indeed, that was firmly denied by Miss Hu.

33. Nevertheless, Miss Hu confirmed in her email of 18 December 2019, and re-affirmed in her oral submissions, that she had cheated.
34. In her email of 18 December 2019, Miss Hu said as follows:

"On December 16, 2017, I saw someone put her contact information on the Internet, saying that she could help to pass the ACCA F4 exam. I got in touch with her on the spur of the moment. She asked me to pay her and asked me to take photos of the questions during the exam and send them to her through QQ. She said she would give the answers to me through QQ. I paid her. On December 20th, I took photos of questions in the examination room and sent them to her. She sent me the answers, and then I passed the exam."

35. On the basis of what was said in that email and in her submissions, the Committee was satisfied that Miss Hu knew that she was sending photographs of the exam questions to a third party to obtain answers to those questions from that third party. In doing so, Miss Hu knew she would gain an unfair advantage over others sitting the exam and basing their answers on their own personal studies and knowledge. She knew that such conduct was dishonest because she had admitted she had "cheated".
36. More particularly, the Committee was satisfied that, by the standards of ordinary decent people, the conduct of Miss Hu was dishonest. Ordinary decent people would expect ACCA students to pass exams using their own knowledge and not with the assistance of a paid third party during the actual exam itself.
37. On this basis, and on Miss Hu's admission, the Committee therefore found Allegation 1c(i) proved.

Allegation 1(c)(ii)

38. Allegation 1(c)(ii) was pleaded in the alternative to allegation 1(c)(i). Having found allegation 1(c)(i) proved, the Committee did not make a separate finding in respect of this allegation.

Allegation 1d(i)

39. The Committee relied upon its findings of fact as set out above.
40. Taking account of its findings that Miss Hu had acted dishonestly, the Committee was entirely satisfied that Miss Hu was guilty of misconduct in that such conduct could properly be described as falling below the standard expected of ACCA students. The integrity of the examination system was central to the protection of the public interest and maintaining confidence in the profession, ensuring that those who pass examinations and go on to qualify are competent to become members of the profession. The dishonest conduct of Miss Hu brought discredit to herself, the Association and the accountancy profession.
41. The Committee therefore found Allegation 1(d)(i) proved.

Allegations 2(a)(i), (ii), & (iii)

42. On 20 December 2018, ACCA initially wrote to Miss Hu at her registered postal address for her comments and observations with regard to ACCA's investigation. She was asked to respond by 18 January 2019. ACCA's letter sets out clearly the requirement for Miss Hu to co-operate with the investigation. ACCA's letter was also e-mailed to her on the same day to her registered e-mail address.
43. Miss Hu failed to reply.
44. On 21 January 2019, ACCA wrote a further letter to Miss Hu's registered postal address and her registered e-mail address.
45. Miss Hu failed to reply.
46. On 14 February 2019, a final letter was sent to Miss Hu at her registered postal address and her registered e-mail address.
47. Miss Hu failed to reply.
48. The Committee noted that the email address to which the above correspondence was sent was the same email address used by Miss Hu in her email to ACCA on 2

September 2019 at 15:45, confirming her intention to attend the hearing on 3 September 2019 by telephone, and the need for an interpreter.

49. During the hearing, Miss Hu confirmed that the postal address on the three letters was correct but denied having received any of the letters through the post.
50. Miss Hu also said that the email address was the correct address but stated that, in the period from December 2018 to February 2019, she had not looked at her ACCA email address and therefore had not realised that any emails had been sent to her.
51. The Committee was satisfied that ACCA had complied with the requirements of Regulation 15 of the Membership Regulations 2014, and there had been a failure on the part of Miss Hu to engage with ACCA in the course of its investigation.
52. As a consequence of that failure, the Committee was satisfied that Miss Hu had acted contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014, as amended in that she had failed to co-operate fully, or at all, with ACCA's investigation of the complaint which had been made against her, by failing to respond to the correspondence by the dates set out in each letter.
53. The Committee therefore found Allegation 2(a) proved.

Allegation 2(b)(i)

54. The Committee considered that it was of paramount importance for members, whatever their status, to co-operate with their regulator. This was crucial in order that the interests of the public can be protected, and the reputation of the profession can be maintained. Miss Hu had failed to engage, at any stage, with the process and whilst ACCA had been able to investigate the matter in any event, the lack of co-operation on the part of Miss Hu was nevertheless serious. In the Committee's judgement, the explanation put forward by Miss Hu was entirely inadequate to justify a failure to respond to not one, but three emails over a period of three months.
55. The Committee accepted that it was possible the letters may not have been delivered to Miss Hu's registered address on the university campus (where she was still living), but there was no doubt that the emails had been received at her registered email address. It was not sufficient for Miss Hu to simply state that she did not use this email

address and had not checked her emails, as this was one of the main ways that ACCA could communicate with students overseas.

56. The Committee was satisfied that such a failure amounted to misconduct on her part in that such conduct brought discredit to Miss Hu, the Association and the accountancy profession.
57. The Committee therefore found Allegation 2(b)(i) proved.

Allegation 2(b)(ii)

58. As the Committee had found Allegation 2(b)(i) proved, and as it was the more serious allegation, the Committee considered there was no requirement to make a separate finding in respect of this allegation.

SANCTION AND REASONS

59. 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 (January 2019) and the principle of proportionality. It had also listened to legal advice from the Legal Adviser, which it accepted.
60. 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 given the serious nature of the allegations.
61. 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.
62. The Committee considered whether any mitigating or aggravating factors featured in this case.
63. In terms of mitigating factors, the Committee had not been informed of any previous findings against Miss Hu.

64. The Committee noted that, when she eventually engaged with the proceedings, Miss Hu had sent an email to ACCA in which she admitted her wrongdoing, accepting that she had cheated in the exam, and explaining fully the process she followed in order to cheat. Miss Hu had stated openly in her oral submissions that she had cheated, and she had admitted that she had acted dishonestly.
65. To that extent, the Committee was satisfied that she had shown a level of insight into the circumstances giving rise to Allegation 1, that her contrition was genuine, and that she recognised the seriousness of her conduct.
66. The Committee had not been provided with any testimonials or references as to Miss Hu's character.
67. As for aggravating features, on the basis of the findings, it had been established that Miss Hu's behaviour, which led to Allegation 1, had been premeditated and deliberate. Her course of dishonest conduct had commenced a few days before the exam took place, when she had paid money to a third party to assist her in the exam. Indeed, Miss Hu had gone to the lengths of asking the third party whether she would be refunded her money if she failed the exam.
68. During the course of the exam, the dishonest conduct, namely taking photographs of the question, sending them to the third party, then waiting for the answers to be sent to her, represented a concerted effort to cheat in order to pass the exam and to progress to a qualification by deceit.
69. Had it not been for the third party endeavouring to profit from Miss Hu's dishonest conduct by selling the information on the internet, the Committee considered it was reasonable to infer that it was likely the unfair advantage gained by Miss Hu may have gone undetected.
70. Indeed, the Committee was not satisfied that Miss Hu had shown a full level of insight into the serious consequences of her dishonest conduct. Such conduct put at risk the reputation of ACCA and the integrity of the examination process which was designed to ensure that only those who had proved their competence would be allowed to practice in the profession. It was also in contrary to the Exam Regulations with which

Miss Hu would have been familiar, as this was not the first ACCA exam she had taken. She had sent to a third-party confidential exam questions. As soon as she had done so, all control over that information was lost, and it led to the sale of those exam questions being advertised on the world wide web.

71. Miss Hu's conduct had benefited her but had disadvantaged genuine and hard-working students who then pass (or fail) the exam based on their own merits.
72. The Committee also remained unconvinced that Miss Hu fully appreciated the obligation on students to co-operate with ACCA. Indeed, in an email sent by Miss Hu to the Committee dated 9 January 2020, in advance of the Committee considering sanction, and after Miss Hu had been provided with the Committee's findings on the Allegations which she said she had read, she continued to maintain that she had not "deliberately" failed to read the emails sent to her and which formed the basis of Allegation 2. The Committee repeated its findings in respect of Allegation 2 above and paragraph 55 of its decision, with regard to the obligations on students to ensure that they respond to communications from ACCA.
73. The Committee concluded that neither an admonishment nor a reprimand would adequately reflect the seriousness of the Committee's findings.
74. 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. Such sanctions would not protect the reputation of the profession.
75. Miss Hu had been found to have acted dishonestly in a premeditated manner. The Committee was also concerned that, based on its findings, the objective of her dishonest conduct was to gain an unfair advantage which enabled her to pass the exam. It ran the risk that, in this way, Miss Hu may have gained her qualification when not competent to do so. As stated, it undermined the integrity of the entire examination process and put at risk, the reputation of ACCA. This was conduct which placed the reputation of ACCA at risk and which was fundamentally incompatible with being a student member of ACCA.

76. The Committee had considered whether there were any exceptional reasons why the Committee should consider that it would not be necessary to remove Miss Hu from the student register, but could find none. Miss Hu had indicated that she had felt under enormous pressure to pass her exams as her fellow students were passing them and she was concerned that she would fail. Miss Hu also said that she did not wish to let down her parents. However, the Committee did not consider that this amounted to exceptional reasons such that it would not be appropriate to remove Miss Hu from the student register. These were the usual pressures which students were under when seeking professional qualifications.
77. The Committee concluded that the appropriate, proportionate and sufficient sanction was to order that Miss Hu shall be removed from the student register. This was necessary to reflect the serious nature of her conduct and, also, to protect and maintain the reputation of ACCA.

COSTS AND REASONS

78. The Committee concluded that ACCA was entitled to be awarded costs against Miss Hu. The amount of costs for which ACCA applied was £7,322.66. All parts of the allegations, to include dishonesty, had been found proved. The Committee did not consider that the claim was unreasonable. Indeed, not all of the costs in the hearing had been claimed.
79. The Committee then considered the amount it should award, taking into account Miss Hu's ability to pay.
80. Miss Hu had provided ACCA with details of her means which were clearly very limited. Indeed, as a student, she had no income and was reliant on her parents for financial support. Whilst that information had not been supported by any documents to verify the amounts, ACCA did not challenge it and the Committee accepted Miss Hu's submission. The Committee had also taken into consideration the submission made by Miss Hu of the value of money in the UK compared with China when she said that, based on the exchange rate and the cost of living, what may seem like a relatively small amount in the UK would represent a much larger financial commitment in China.

81. The Committee had also noted that Miss Hu would be finishing her current course in University in six months and was likely then to be in a position to look for full-time employment.
82. In exercising its discretion, the Committee, taking into account Miss Hu's current financial situation, considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £750.00.

EFFECTIVE DATE OF ORDER

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

Mrs Lubna Shuja
Chair
09 January 2020