

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Nai Xin Ye

Heard on: Tuesday 14, and Wednesday 15 January 2020

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

Committee: Mr Maurice Cohen (Chair)
Mr Peter Brown (Accountant)
Mr Gerard McClay (Lay)

Legal Adviser: Mr Robin Havard (Legal Adviser)

Persons present

and capacity: Mr Simon Walters (ACCA Case Presenter)
Ms Anna Packowska (Hearings Officer)
Ms Min Xu on 14 January 2020 and Miss Sophie Sanders on
15 January 2020 (Interpreters)
Miss Nai Xin Ye (Student member – by telephone)

Summary: **Removal from student register**

Costs: **Cost of £500.00 to ACCA**

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

AMENDMENT

1. Mr Walters applied to amend Allegation 1(c)(iii) as, in error, the words "and/or" had been included at the end of the allegation. The application was to delete those words. Miss Ye did not object.
2. The Committee was satisfied that this was a typographical error and their deletion caused no prejudice to Miss Ye. In the circumstances, the application was granted.

ALLEGATIONS

Allegation 1

- (a) During an FM examination on 7 December 2018, Miss Nai Xin Ye:
 - (i) Used in the exam room an unauthorised item, namely a mobile phone; and/ or
 - (ii) took to her exam desk and/or was in possession of unauthorised materials, namely two pages of handwritten notes, which she had at her desk while the exam was in progress;at Ningbo University CBE Centre, Ningbo, China.
- (b) Miss Nai Xin Ye intended to use the materials set out at 1(a)(ii) above to gain an unfair advantage.
- (c) Miss Nai Xin Ye's conduct in respect of 1(b) above was:
 - (i) Dishonest; or in the alternative

- (ii) Contrary to the Fundamental Principle of Integrity as applicable in 2018, in that such conduct demonstrates a failure to be straightforward and honest; and
 - (iii) Contrary to Examination Regulations 4 and/or 5
- (d) Miss Nai Xin Ye's conduct in respect of 1(a)(i) above was contrary to Examination Regulation 6.
- (e) By reason of her conduct, Nai Xin Ye 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(d) above; or
 - (ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of 1(a) and 1(c)(iii) and (d) above.

DECISION ON FACTS, ALLEGATIONS AND REASONS

3. The Committee had considered the following documents when reaching its decisions in these proceedings: ACCA's bundle (pages 1 – 139), Tabled Additional (1) (pages 1-13), Tabled Additional (2) (pages 1-6), and a Service bundle (1) (pages 1-17). It had listened to the outline of ACCA's case as described by Mr Walters. It had considered the witness statements and exhibits contained in the bundle. It had also listened carefully to the submissions of Miss Ye.

Allegations 1(a)(i)

4. Miss Ye admitted the facts of Allegation 1(a)(i) and the Committee found them proved.
5. The Committee made the following additional findings of fact.
6. Miss Ye Nai Xin first registered as an ACCA student member on 7 August 2017. She had passed two exams and gained five exemptions.

7. In June 2018, she had attempted the Financial Management ("FM") exam which she failed.
8. On 7 December 2018, Miss Ye attended the Ningbo University Computer Based Exam ("CBE") centre in Ningbo City, China, in order to resit the FM examination which she had failed in June 2018. The exam commenced at 2pm and was due to last for 3 hours 20 minutes.
9. All candidates for ACCA examinations are made aware of the Examination Regulations as follows:
 - Prior to an examination, all CBE candidates registering for CBE in advance of each CBE session receive a student information sheet which contains the ACCA guidelines and Regulations;
 - Before an examination commences, the Supervisor makes an announcement for CBE candidates, drawing candidates' attention to the Regulations and guidelines outlined in the student information sheet. In particular, point 5 is a clear instruction to all candidates to remove all unauthorised items and materials from their desks.
10. Miss Ye arrived at her examination at 1:50pm and was present when the Supervisor's announcements were made. She had her examination attendance docket, but stated that she had not read the reverse of the docket and the Examination Regulations.
11. However, the Committee found that Miss Ye had sat exams on a number of previous occasions and so would have been familiar with the announcements made by the Supervisor before the commencement of an exam. Indeed, in her later response to ACCA in the course of the investigation, she confirmed that she had heard the announcements being made.
12. At 2:14pm, an Invigilator, Person B, was walking to Miss Ye's desk, when Miss Ye *"was found reading or typing on her mobile phone... At that time, her mobile phone*

screen was lighted on and I could see she was using the mobile phone, although she had put most part of phone under a scratch paper.”

13. As Person B approached Miss Ye, *“she could be seen trying to hide the phone completely below the paper”*. Person B took the phone from under the paper and reported the case to the Supervisor.
14. Person B stated that there were no other witnesses to the incident and told Miss Ye that mobile phones are not allowed in the exam.
15. Person B provided Miss Ye with an SCRS2A form at the end of the exam, and Miss Ye completed it. Miss Ye was made aware that the matter was being referred to ACCA and was provided with a Student Disciplinary Procedure Information sheet. Person B signed and dated the form.
16. Miss Ye stated that *“I am truly sorry for my behaviour to bring my phone with me when [I] attend the examinations. Before taking the exam, [PRIVATE], forgetting mobile phones is not permitted in examination. But I sware [sic] I have not searched any informations [sic] about the examination. I’m willing to take responsibility for my behaviour to cancel this exam’s grade. Please give me second chance, I promise this mistake won’t occur again. Sincerely apologize again.”*
17. Miss Ye confirmed that the invigilator witnessed the incident, that the invigilator told her *“the mobile phone is prohibited in the exam”* and that she agreed with what she had been told. Miss Ye signed and dated the form.
18. The Supervisor, Person C, stated that the *“invigilator reported to me that the candidate was using the mobile phone during the exam. I told the candidate mobile phone is forbidden; she told me that she called [PRIVATE] before the exam, so she put the phone in pocket and didn’t take it out until the start of the exam. I let the student finish the exam and took away her phone.”*
19. When Person C told Miss Ye that having a mobile phone was forbidden during the exam, Miss Ye explained *“that she called [PRIVATE] before the exam, so she forgot to take away the phone in storage room.”*

20. After the exam, Person C asked Miss Ye whether she was willing to show her the phone history with her [PRIVATE]. Person C stated that, *"She refused, because she thought it was privacy. It is iPhone 6. Candidate locked the screen after it was found by invigilator."* Person C signed and dated the form.
21. The Committee had found Miss Ye to be inconsistent in the accounts she had provided with regard to the mobile phone.
22. On 21 February 2019, ACCA wrote to Miss Ye asking her a series of questions in relation to her use of the mobile phone. She accepted that she was in possession of the mobile phone during the exam. She said that she had taken it into the exam as [PRIVATE]. She gave the following responses to ACCA's enquiries:

"[PRIVATE] send me a message and I tried to check it before Supervisor found my checking." and, "I attempted to get touch with [PRIVATE] but not to gain an unfair advantage. As I said, before the exam [PRIVATE] told me there was something [PRIVATE], so worried was I, I just wanna check if everything was ok."
23. In relation to whether Miss Ye intended to use the unauthorised item, she said *"I didn't intend to use it to cheat"*.
24. In the Case Management Form Miss Ye sent to ACCA in August 2019, she said that she had taken the mobile into the exam room by accident and was trying to, *"turn off the bell"* so as not to disturb others when the invigilator saw her.
25. In her submissions at the hearing, Miss Ye stated that she was wearing a thick winter coat on entering the exam and had forgotten that her mobile was in her pocket.
26. Taking account of the different versions provided by Miss Ye, the Committee found, on the balance of probabilities, that the most likely account, and the one which was most consistent with the evidence of Person B, was that Miss Ye had decided to take the mobile into the exam with her, and was using it in the manner alleged by Person B. The Committee noted the explanation put forward at the time by Miss Ye, namely that she was using the mobile to communicate with [PRIVATE] regarding

[PRIVATE] although the Committee further noted that Miss Ye refused permission to the Supervisor to access her mobile to look at what calls/messages had been received, and sent, by Miss Ye without providing a reasonable explanation for this refusal.

27. On this basis, and on the basis of Miss Ye's admission, the Committee found the facts of Allegation 1(a)(i) proved.

Allegation 1(a)(ii)

28. Miss Ye admitted the facts of Allegation 1(a)(ii) and the Committee found them proved.
29. The Committee relied on its findings of fact as set out in paragraphs 6 to 11 above.
30. At about 3:15pm, on 07 December 2018, an Invigilator, Person A, was patrolling the exam room and found Miss Ye *“trying to read pre-prepared notes for help”*. The notes were found hidden under the scrap paper. Person A described the notes as *“written with various unauthorised information”* and that their *“colour was different from that of the scrap paper.”* Person A collected the notes and transferred them to the Supervisor.
31. Person A stated that there were no other witnesses to the incident. Person A asked Miss Ye where she got the notes and Miss Ye *“didn’t say anything but just tried to take it back.”*
32. Person A provided Miss Ye with an SCRS2A form after the exam and Miss Ye completed it. Miss Ye was made aware that the matter was being referred to ACCA and was provided with a Student Disciplinary Procedure Information sheet. Person A signed and dated the form.
33. Miss Ye stated that she was *“truely [sic] sorry to bring note with me when attend the exam. I’ll be responsible for my behavior [sic] with no excuse. Please cancel my grade this time and give me second chance. I promise this mistake won’t occur again.”*

34. Miss Ye confirmed that the invigilator witnessed the incident, that the invigilator told her *"note is prohibited in the exam"* and that she agreed with what she had been told. Miss Ye signed and dated the form.
35. The Supervisor, Person C, also completed an SCRS1A Form in relation to Miss Ye's notes. Person C provided the following account of the incident: *"Invigilator reported to me that [Miss Ye] referred to notes during the exam. I took away the notes and let the candidate continue her exam. After the finish of the exam, I asked the fact of this event. She admitted that she referred to notes because the exam too difficult for her."*
36. Person C added that *"the truth is that she cheated in exam, admitted by candidate herself."*
37. The Ningbo CBE Centre's daily log contained an entry in relation to examination incident reporting *"Invigilator Person B found the candidate Ye Naixin... was using mobile phone after the start of the exam... I collected her mobile phone and asked the student to complete SCRS1B form after exam. Then at 15:10, the student was found using two scripts about ACCA syllabus (photo was taken). The student asked to leave in advance but was refused."*
38. Further on in the log, there is a record under "Abnormal or unusual circumstances, Irregulars" in relation to Miss Ye which states *"Took mobile phone into the exam room and used it in process. The candidate was asked to complete SCRS1B form after exam. Later, this candidate used two scripts with full details about ACCA syllabus and ask to leave the room in advance at 15:00. The candidate was asked to comp [sic] SCRS1"*.
39. On 22 December 2018, the notes were examined by a Qualifications Technical Advisor in order to verify the relevance of the unauthorised material and he completed an Irregular Script form. After reviewing Miss Ye's exam script, he indicated that the material was relevant to the syllabus for the paper and that the material was relevant to this particular examination, although he could not say for certain whether the notes had been used when the student was attempting the examination. He explained that *"the handwritten notes are 100% relevant to the*

financial management syllabus, and are therefore relevant to this examination. (The BPP questions relate not to FM but to tax). It is possible that the handwritten interest cover formula helped to gain one mark in question 7727. I do not know the questions faced by the candidate in sections A and B”.

40. On 17 January 2019, Miss Ye wrote to ACCA stating that she, *“didn’t intend to cheat in the exam ..., though my behaviour was a breach of regulations. I thought the scratch paper are blank, but when I took out the paper, they had already been used before..... Because I am not a native speaker, when I want to express I brought the scratch paper to the exam by accident, I didn’t realize the difference between notes and scratch paper, I thought they are the same meaning. So when the investigator asked me whether I brought the notes, I said “yes”, which is totally wrong. In fact, they are just scratch paper. And I am in a panic when I was informed to stay and write the report. So I didn’t explain it clearly. ... Firstly, the paper are about A5 size, if I wanna [sic] cheat, why should I bring paper of this size instead of slip of paper. Secondly, as you can see on the paper, I wrote many questions on them, which are written when I review the FM to recite. No answer of the questions are recorded on the paper. And all formulas I write from memory on the paper can be found in the formula band which is provided in the exam. In a word, the content of the paper is not useful for the exam...”.*
41. In answer to a letter from ACCA of 21 February 2019, Miss Ye confirmed that she was in possession of the notes during the exam but denied that they contained any useful information. She said that she had brought them by accident. She had not intended to use them as they contained no useful information. However, she accepted that she had brought the notes into the examination with her, and that they amounted to unauthorised material.
42. On this basis, and on the basis of the admission of Miss Ye, the Committee found the facts of Allegation 1(a)(ii) proved.

Allegation 1(b)

43. Miss Ye admitted the facts of Allegation 1(b) and the Committee found them proved.
44. The Committee relied on its findings of fact at paragraphs 28 to 41 above.
45. Furthermore, in the Case Management Form completed by Miss Ye and submitted in advance of this hearing, Miss Ye made the following admission: *"I do have the intention to get unfair advantage by notes. I apologize for my action. I've always been disciplined in the exam, and I don't have any bad records. This is my first attempt to cheat. I apologize for my previous dishonesty out of fear. "*
46. When Miss Ye made submissions to the Committee at the hearing, she explained that the reason for taking the notes into the exam was due to the fact that she had not passed the exam previously and that was why she was, *"trying to test my luck"*. She was very sorry for what she did. She admitted it was dishonest behaviour.
47. The Committee was satisfied that Miss Ye had intended to use the notes she had taken into the exam with her to cheat in an attempt to pass the exam. In this way, she intended to use the notes to gain an unfair advantage. Indeed, this was consistent with the account provided by the Supervisor, as outlined in paragraph 34 above.
48. On this basis, and on the basis of the admission of Miss Ye, the Committee found the facts of Allegation 1(b) proved.

Allegation 1(c)(i)

49. The Committee relied on its findings of fact set out above.
50. On the basis of what was said by Miss Ye in the Case Management Form, and her submissions, the Committee was satisfied that Miss Ye knew that she had taken the notes into the exam to enable her to cheat. It was a deliberate course of conduct designed to enable her to pass the FM exam, having failed the same exam in June 2018. In doing so, Miss Ye knew she would gain an unfair advantage over others sitting the exam who would be basing their answers on their own personal

studies and knowledge. She knew that such conduct was dishonest because she had admitted she had "cheated".

51. More particularly, the Committee was satisfied that, by the standards of ordinary decent people, the conduct of Miss Ye was dishonest. Ordinary decent people would expect ACCA students to pass exams using their own knowledge, and not with the assistance of notes which she had taken some time to prepare in advance, which she then deliberately took into the exam in order to cheat.
52. On this basis, and on Miss Ye's admission, the Committee therefore found Allegation 1(c)(i) proved.

Allegation 1c(ii)

53. 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 1(c)(iii)

54. The Committee relied on its findings of fact above, and Miss Ye's admission, and found this Allegation proved.

Allegation 1(d)

56. The Committee relied on its findings of fact above, and Miss Ye's admission, and found this Allegation proved.

Allegation 1(e)(i)

57. The Committee relied upon its findings of fact as set out above.
58. Taking account of its findings that Miss Ye had acted dishonestly, the Committee was entirely satisfied that Miss Ye was guilty of misconduct in that such conduct could properly be described as falling far 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 Ye brought discredit to herself, the Association and the accountancy profession.

59. The Committee also found that the act of taking a mobile phone into an exam, even for the purpose suggested by Miss Ye, amounted to misconduct. Her decision to take the mobile phone into the exam was in direct contravention of the Exam Regulations with which she was familiar. Again, it represented conduct which could properly be described as falling below the standard expected of ACCA students. As such, it brought discredit to herself, the Association and the accountancy profession.
60. The Committee therefore found Allegation 1(e)(i) proved in respect of allegations 1(a) to (d) above save for Allegation 1(c)(ii).

Allegation 1(e)(ii)

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

SANCTION AND REASONS

62. 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.
63. 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.

64. 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.
65. The Committee had not been informed of any previous findings against Miss Ye.
66. The Committee considered whether any mitigating or aggravating factors featured in this case
67. In terms of mitigating factors, the Committee noted that, whilst Miss Ye had originally denied that she had used the notes she took into the exam in an attempt to cheat, she had admitted her misconduct when she returned the Case Management Form to ACCA. As for the allegation relating to the mobile phone, whilst Miss Ye had provided differing accounts, she had admitted the allegation. Furthermore, she had engaged in the proceedings and had joined the hearing by telephone, confirming her admission of the allegations, to include her recognition that she had acted dishonestly.
68. To that extent, the Committee was satisfied that she had shown a level of insight into the circumstances giving rise to the allegations, that her contrition was genuine, and that she recognised the seriousness of her conduct.
69. The Committee had not been provided with any testimonials or references as to Miss Ye's character.
70. As for aggravating features, on the basis of the Committee's findings, it had been established that Miss Ye's behaviour which led to Allegation 1 had been premeditated and deliberate. Her course of dishonest conduct had commenced prior to the exam taking place by writing out two sides of notes which she then brought with her to the exam. She had also taken her mobile phone into the exam when she knew, having heard the announcements by the Supervisor in this and previous exams, that this was not permitted.

71. During the course of the exam, the dishonest conduct, having available the relevant notes when answering the exam questions, represented a concerted effort to cheat in order to pass the exam and to progress to a qualification by deceit. Miss Ye had accepted that her motivation for doing so was because she had failed the same exam six months earlier in June 2018.
72. 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 contrary to the Exam Regulations with which Miss Ye was familiar, as this was not the first ACCA exam she had taken.
73. Had she not been caught, Miss Ye's conduct would have benefited her and would have disadvantaged genuine and hard-working students who then pass (or fail) the exam based on their own merits.
74. The Committee concluded that neither an admonishment nor a reprimand would adequately reflect the seriousness of the Committee's findings.
75. 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 or ensure the integrity of the exam process.
76. Miss Ye 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 which she had previously failed. It ran the risk that, in this way, Miss Ye 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 was fundamentally incompatible with being a student member of ACCA.

77. The Committee had considered whether there were any exceptional reasons why the Committee should consider that it would not be necessary to remove Miss Ye from the student register, but could find none. Miss Ye had indicated that her motivation for trying to cheat was to pass an exam she had failed. The very purpose of exams is to ensure that only those students who have proved themselves to be sufficiently competent and knowledgeable should be able to enter the profession. The Committee did not consider that there were any reasons which could be described as exceptional such that it would not be appropriate to remove Miss Ye from the student register.
78. The Committee concluded that the appropriate, proportionate and sufficient sanction was to order that Miss Ye 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

79. The Committee concluded that ACCA was entitled to be awarded costs against Miss Ye. The amount of costs for which ACCA applied was £6,810.00. In view of the allegations which had been found proved, including dishonesty, the Committee did not consider that the claim was unreasonable.
80. The Committee then considered the amount it should award, taking into account Miss Ye's ability to pay.
81. Miss Ye had provided ACCA with details of her means which were clearly very limited in terms of income. [PRIVATE].
82. The Committee had also been provided with details of the financial means of Miss Ye's family. However, the Committee did not consider it was appropriate to take the family's finances into account. In reaching this conclusion, the Committee had taken note of the Guidance on Costs and, in particular, paragraphs 20 to 22 which only made reference to the means of the student member.

83. The Committee had also noted that Miss Ye hoped to continue as a student at university and, therefore, there was no indication that Miss Ye would be in a position to look for full-time employment in the foreseeable future.
84. In exercising its discretion, and taking into account Miss Ye's current financial situation, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £500.00.

EFFECTIVE DATE OF ORDER

85. 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.

Mr Maurice Cohen
Chair
15 January 2020