

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS REASONS FOR DECISION

In the matter of: Mr Jiaxiang Chen

Heard on: Wednesday, 01 July 2020

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

Committee: Mr Martin Winter (Chair),
Mr Nigel Pilkington (Lay), and
Mr Ryan Moore (Accountant)

Legal adviser: Mr Alastair McFarlane

Persons present

and capacity: Mr Ben Jowett (Case presenter on behalf of ACCA)
Ms Anna Packowska (Hearing Officer)

Summary: **Removal from the student register, costs to ACCA £5,300**

1. ACCA was represented by Mr Jowett. Mr Chen did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages 1-50, a service bundle numbered pages 1-19 an additional bundle numbered pages 1-7.

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SERVICE/ PROCEEDING IN ABSENCE

2. Having considered the service bundle, the Committee was satisfied that notice of the hearing was served on Mr Chen in accordance with the Complaints and Disciplinary Regulations 2014 (“CDR”).
3. The Committee next considered whether it was in the interests of justice to proceed in absence of Mr Chen. The Committee accepted the advice of the Legal Adviser. The Committee was mindful that Mr Chen had a right to attend the hearing and to participate and that the discretion to proceed in his absence must be exercised with the utmost care and caution.
4. The Committee noted that ACCA’s notice, dated 03 June 2020, sent to Mr Chen’s email address in China, offered him the opportunity of attending via video or telephone link, with the costs being met by ACCA. Mr Chen had not availed himself of this opportunity or made any communication with ACCA about attending the hearing. He had not engaged with ACCA about the case at all. The Committee noted the chasing email was sent to his email address on 24 June without response, and that the Hearing Officer had attempted to contact Mr Chen by telephone on 26 June but without success. The Committee was satisfied that all reasonable attempts have been made to secure Mr Chen’s attendance/participation at the hearing. The Committee was satisfied that Mr Chen had voluntarily disengaged from the process and was not persuaded that an adjournment would increase the chance of Mr Chen attending or participating further in the case. On the information before it and bearing in mind its duty to ensure the expeditious conduct of its business and the wider public interest, the Committee was satisfied that it was in the interests of justice to proceed in the absence of Mr Chen. The Committee reminded itself that his absence added nothing to ACCA’s case and was not indicative of guilt. The Committee also agreed under Regulation 10(5) to a minor amendment to Allegation 2.1, by the substitution of “or” for “to”, which it was satisfied was a simple typographical error and in no way prejudices Mr Chen even though he is unaware of it.

ALLEGATIONS

Allegation 1

1. During a Financial Accounting (FFA) computer-based exam (CBE) on 06 August 2019:

1.1 Mr Chen Jiaxiang had on his person and used during the exam a photographic device to take photographs of his CBE exam questions contrary to Exam Regulation 6.

1.2 Mr Chen Jiaxiang shared the photographs described in paragraph 1.1 with a person or persons unknown.

1.3 Mr Chen Jiaxiang's conduct in respect of any or all of the matter set out at 1.2 above was reckless in that by sharing photographs of his exam with a person or persons unknown, he, she or they could use them to be published or otherwise shared with entrants for the Financial Accounting (FFA) computer-based exam who would thereby obtain an unfair advantage.

1.4. By reason of his conduct Mr Chen is

- (i) Guilty of misconduct pursuant to byelaw 8(a)(i), in respect of 1.1 and/or 1.2 and/or 1.3 above;
- (ii) Liable in the alternative to disciplinary action pursuant to byelaw 8(a)(iii), in respect of 1.1 only.

Allegation 2

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

2.1 He failed to respond at all to any or all of ACCA's correspondence dated:

2.1.1 07 November 2019;

2.1.2 28 November 2019; and

2.1.3 13 December 2019;

2.2. By reason of his conduct in respect of any or all of the matters set out at 2.1 above, Mr Chen is:

2.2.1. Guilty of misconduct, pursuant to byelaw 8(a)(i);

2.2.2 Liable to disciplinary action, pursuant to byelaw 8(a)(iii).

BACKGROUND

5. Mr Chen registered as an ACCA student on 28 May 2019.
6. ACCA CBE Delivery Team received a referral from Person A. Person A raised concerns about the integrity of ACCA's CBE exams after they found CBE questions were shared on WeChat group. Person A supplied ACCA with copies of the images.
7. Mr Docherty, an ACCA Senior CBE (Computer Based Exam) Administrator, reviewed images supplied by Person A. In his referral form, Mr Docherty explained that the student's ACCA registration number is at the top of the screen, which allowed the student to be identified, as well as the on-demand centre at which students attempt their exams. Mr Docherty asserted that the header also shows that the CBE exam sat was FFA – Financial Accounting on 06 August 2019, which Mr Chen passed. Mr Docherty confirmed that the student registration number at the top of pictures is 4600249 and that this is the ACCA registration number of Mr Chen Jiexiang. He also confirmed that these were the questions contained in the FFA CBE exam on 06 August 2019.

ACCA's SUBMISSIONS

Allegation 1.1 – Using and/or possessing an unauthorised item

8. Allegation 1.1 concerns the possession of an unauthorised item by Mr Chen during the CBE exam contrary to Exam Regulation 6. ACCA submitted that the photographs which form part of ACCA's case indicated that Mr CHEN was in possession of a device capable of taking photographs when he sat his FFA CBE, and that he was, therefore, in breach of Exam Regulation 6.

Allegation 1.2 – Mr Chen caused and/or permitted an image and/or images of an exam question to be made and/or shared on the WeChat group.

9. ACCA contended that Allegation 1.2 concerns the taking and sharing of the images or permitting them to be shared in the WeChat group, as distinct from the use and possession of the unauthorised item.

Allegation 1.3.1 – Mr Chen was reckless in his conduct described in 1.1 and 1.2

10. ACCA submitted that taking and sharing of photos of exam questions from a Computer Based Examination that the student is sitting constitutes behaviour the student knows to be wrong and was reckless because the student should have recognised the consequences of what he did. The taking and sharing of photographs of exam questions or papers in this manner undermines the integrity of the exam in question and more generally ACCAs' qualifications, causing potentially considerable reputational harm. It contended that this amounted to "reckless" conduct.

Allegation 2 -Failure to Cooperate with ACCA's Investigation

11. ACCA sent e-mail correspondence to Mr Chen's registered e-mail address as set out under regulation 15 of The Membership Regulations 2014.
12. Mr Chen failed to respond to ACCA's investigation in this matter. ACCA submitted that Mr Chen's failure to co-operate fully with ACCA's investigation into his conduct demonstrated a lack of professionalism and a disregard for ACCA's regulatory process. Mr Chen's failure to respond to questions asked by ACCA into his conduct did not prevent ACCA from investigating this matter, as evidence was obtained through third party sources. Nevertheless, ACCA submitted that the failure was serious for organisations, such as ACCA, that self-regulate their members, as ACCA

needs a member's co-operation in order to investigate complaints fully in order to discharge its regulatory function.

MR CHEN'S SUBMISSIONS

13. There were no submissions from Mr Chen.

DECISION ON ALLEGATIONS AND REASONS

14. The Committee accepted the advice of the Legal Adviser. The Committee reminded itself that the burden of proving the allegations was on ACCA alone and that Mr Chen's absence added nothing to ACCA's case.
15. The Committee heard that there had been no previous findings against Mr Chen and accepted that it was relevant to put his good character into the balance in his favour.

DECISION ON FACTS

16. The Committee carefully considered all the documentary evidence it had received, as well as the submissions of Mr Jowett on behalf of ACCA. It reminded itself to exercise caution as it was working from documents alone.

Allegation 1.1

17. The Committee was satisfied that Mr Chen sat the FFA exam on 06 August 2019. It accepted the evidence of Mr Docherty as clear, accurate and reliable. It further accepted it was more likely than not that the anonymous Person A found the photographs referred to in ACCA's bundle on the WeChat group. It was satisfied that these photographs showed Mr Chen's unique ACCA number and pages of the exam that it accepted he sat in China on 06 August 2019. It was satisfied that it was reasonable to infer on the balance of probabilities that Mr Chen took these photographs on a device during the exam. It was satisfied that the device was an unauthorised device under Exam Regulation 6. Accordingly, the Committee was therefore satisfied that Allegation 1.1. was proved.

Allegation 1.2

18. The Committee next considered whether ACCA had proved that Mr Chen shared the photographs with persons known or unknown. The Committee accepted the evidence relating to Person A to the effect that the photographs were found on the WeChat page and was satisfied that it was a reasonable inference to draw that as Mr Chen had covertly taken the photographs during his exam that it was more likely than not that he had caused them to be shared with persons unknown. Accordingly, the Committee was satisfied that Allegation 1.2 was proved.

Allegation 1.3

19. The Committee was satisfied that Mr Chen's conduct of sharing the photographs he took of his computer screen during the exam, with a person or persons unknown was reckless conduct. It was satisfied that it was reasonable to draw the inference from the proved facts that he ought to have known that such conduct presented the obvious risk that other examinees could use this information to cheat in subsequent exams. In reaching this conclusion, the Committee bore in mind that Mr Chen was a student undertaking a serious professional exam; that he had signed the Exam Regulations declaration and that this was not his first exam with ACCA. Accordingly, this Allegation was proved.

Allegation 1.4

20. The Committee next considered under Allegation 1.4 whether the proved conduct at 1.1 and or 1.2 and or 1.3 amounted to misconduct.
21. The Committee had regard to the definition of misconduct in byelaw 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Mr Chen's actions brought discredit on him, the Association and the accountancy profession. It was satisfied that the covert taking of photographs of exam questions during an exam; sharing them with persons unknown and the reckless conduct that would allow such persons to publish the questions and share with other entrants for that exam who would thereby obtain an unfair advantage, was deplorable conduct and reached the threshold for misconduct. In effect the conduct opened the doors for

others to cheat and as, at least, Mr Chen ought to have known this, his conduct which undermined ACCA's examination system and public confidence in the profession, was deplorable conduct.

22. In the light of its judgment on Allegation 1.4.1, no finding was needed upon Allegation 1.4.2.

Allegation 2

23. In relation to Allegation 2 the Committee was satisfied that under paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, there was an obligation on Mr Chen to cooperate fully with ACCA in the investigation of any complaint. It was satisfied that Mr Chen made no response to ACCA's correspondence requesting his cooperation on the 07 November 2019, 28 November 2019 and 13 December 2019. It was further satisfied that these non-responses amounted to failures as Mr Chen had a duty to respond and that therefore he breached the obligation under the Regulations and that Allegation 2 was proved.

MISCONDUCT

24. The Committee was satisfied that the duty on professionals to cooperate with their regulator is an important one, both to enable the regulator to properly and fairly discharge its regulatory function and to uphold public confidence in the regulatory system. For these reasons the Committee was satisfied that Mr Chen's failure to cooperate was sufficiently serious to amount to misconduct. Given the failure amounted to misconduct the Committee did not need to consider the alternative of liability to disciplinary action.

SANCTIONS AND REASONS

25. The Committee noted its powers on sanction were those set out in Regulation 13(4). It had regard to ACCA's Guidance for Disciplinary Sanctions and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate. It accepted the advice of the Legal Adviser.

26. The Committee considered that the conduct in this case to be very serious. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. The Committee reminded itself that this was not a dishonesty case, but one where recklessness was alleged and proved.
27. The Committee has seen no evidence of any insight or understanding from Mr Chen into the seriousness of his behaviour. There were no mitigating factors put before the Committee, other than his previous good character.
28. The Committee identified the following aggravating factors:
- No evidence of insight;
 - Potential harm to the examination system;
 - Potential to undermine the reputation of the profession;
 - Taking the camera device and taking the photographs was intentional, planned conduct, whereas Mr Chen was reckless as to the consequences of his conduct;
 - There was no engagement with ACCA;
 - Breached his position of trust as an ACCA examinee.
29. Given the Committee's view of the seriousness of his conduct, it was satisfied that the sanctions of No Further Action, Admonishment, and Reprimand were insufficient to highlight to the profession and the public the gravity of the proven misconduct. In considering a Severe Reprimand, the Committee concluded that there were no circumstances or mitigation to satisfy it that Mr Chen presented no continuing risk. There was no evidence of any understanding or appreciation of his conduct on the public interest and on the profession. The majority of factors for a Severe reprimand were not present and, in any event such a sanction was not, in the Committee's judgment, sufficient to reflect the gravity of the conduct and the impact on the profession and its reputation.
30. The Committee determined that his behaviour was fundamentally incompatible with Mr Chen remaining on the student register of ACCA and considered that the only

appropriate and proportionate sanction was that he be removed from the student register.

COSTS AND REASONS

31. ACCA claimed costs of £5,768.50 and provided a detailed schedule of costs. It noted Mr Chen was a student, but he had not provided a statement of means. The Committee decided that it was appropriate to award costs in this case but noted that the hearing time had taken less than estimated and, therefore, made a reduction to reflect this. It concluded that the sum of £5,300 was appropriate and proportionate. Accordingly, it ordered that Mr Chen pay ACCA's costs in the amount of £5,300.00.

EFFECTIVE DATE OF ORDER

32. This order shall take effect from the date of the expiry of the appeal period unless notice of appeal is given prior to the expiry of that period, in which case it shall become effective (if at all) as described in the Appeal Regulations. The Committee was not persuaded that the ground for imposing an immediate order was made out given the facts of this case and that public protection is not involved.

Mr Martin Winter
Chair
01 July 2020