

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Lu Chen

Heard on: Thursday, 16 July 2020

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

Committee: Mr Maurice Cohen (Chair),
Mr Simon Lewis (Lay), and
Ms Jo Royden-Turner (Accountant)

Legal adviser: Mr Alastair McFarlane

Persons present

and capacity: Mr Phillip Law (Case presenter on behalf of ACCA),
Ms Anna Packowska (Hearing Officer)

Summary: Removal from student register, costs payable to ACCA of
£4000

1. ACCA was represented by Mr Law. Miss Chen did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages 1-45, a service bundle, numbered pages 1-15, and two tabled additional bundles, numbered pages 1-5 and 1-10.

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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 Miss 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 the absence of Miss Chen. The Committee accepted the advice of the Legal Adviser. The Committee was mindful that Miss Chen had a right to attend the hearing and to participate, and that the discretion to proceed in her absence must be exercised with the utmost care and caution.
4. The Committee noted that ACCA's notice, dated 18 June 2020 to Miss Chen's registered email address in China, offered her the opportunity of attending via video or telephone link, with the costs being met by ACCA. Miss Chen had not availed herself of this opportunity or made any communication with ACCA about attending the hearing. The Committee has seen a Telephone Attendance Note dated 15 July 2020, when the Hearings Officer telephoned Miss Chen's mobile telephone number and the call was answered by Miss Chen. The Officer recorded Miss Chen as replying "*I don't know*" to the question as to whether she had received ACCA's emails and case papers. The Officer reports to the Committee that conversation was difficult owing to apparent language problems. Miss Chen was advised to check her emails. The Officer sent two further emails at 10.28 and 11.34 on 15 July to Miss Chen's email address (which was the same address that ACCA had previously received confirmation that earlier emails were delivered) seeking confirmation of her attendance, and offering the services of an interpreter which ACCA would fund. There was no response to these emails or to a further telephone call made by the Hearings Officer at 1.30pm. The Committee was satisfied that all reasonable attempts have been made to secure Miss Chen's attendance/participation at the hearing. The Committee was satisfied that Miss Chen had voluntarily disengaged from the process and was not persuaded that any adjournment would increase the chance of Miss 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 Miss Chen. The Committee reminded itself that her absence added nothing to ACCA's case and was not indicative of guilt.

APPLICATION TO AMEND

5. Mr Law made an application under Regulation 10(5) to make various amendments to the Allegations. These included some which could be referred to as typographical, but the central ones were to alter its case from alleging that Miss Chen "*offered to sell*" the exam questions to her "*being concerned in an offer to sell*" the questions and on dishonesty. This was because ACCA stated that Miss Chen "*may or may not*" have been the actual seller and that it did not have direct evidence to show Miss Chen was the seller. ACCA submitted that, on its evidence, amending the allegation to her being concerned in the sale more accurately reflected the potential mischief ACCA was alleging. It added clarity and satisfied the public interest to ensure that allegations against individuals were properly put and were consistent with the more proactive role in amending charges to ensure justice that regulators could take as opposed to criminal cases. In addition, ACCA sought to amend the basis of dishonesty consequent on the proposed change to her being involved in the sale. Mr Law indicated that all the proposed changes had been sent to Miss Chen by email dated 10 July 2020.
6. The Committee noted its power to made amendments under Regulation 10 (5) and accepted the advice of the Legal Adviser. The Committee was mindful that this was a case of dishonesty and of the seriousness of that allegation. The Committee had to ascertain overall whether it was fair to make the amendments proposed, balancing the public interest in ensuring the proper allegations are put to the judges of fact and to ensure that Miss Chen was not prejudiced in the conduct of her defence. Miss Chen has not advanced any defence or explanation to the Committee and, in the circumstances, and in the Committee's judgment, it was difficult to conclude, therefore, that her defence was prejudiced in any way. She had known of the proposed amendments for almost a week and before the telephone contact that was established by ACCA

yesterday. It was satisfied that the advantages to the public interest and the proper evaluation of the mischief of the case against her outweighed any possible prejudice and it was, therefore, satisfied that it was fair to make all the amendments proposed.

ALLEGATIONS

Particular 1:

- 1.1. On an unknown date or dates between 24 May 2019 and 30 August 2019 ACCA student Miss Chen Lu was concerned in an offer to sell ACCA F1, F2 and/or F3 CBE questions on the www.1688.com web site:
- 1.2. Miss Chen's conduct in respect of the matters set out at 1.1 above was:
 - 1.2.1. Dishonest in that she made exam questions available in return for payment, that would have allowed exam entrants to gain an unfair advantage, or in the alternative
 - 1.2.2. Contrary to the Fundamental Principal of Integrity (2019) in that such conduct is not straightforward and honest.
- 1.3. By reason of any or all of her conduct in respect of 1.1 and/or 1.2 above, Miss Chen is guilty of misconduct pursuant to byelaw 8(a)(i).

Particular 2

- 1.4. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Miss Chen has failed to co-operate fully with the investigation of a complaint in that she failed to respond at all to ACCA's correspondence dated:

- 1.4.1. 06 November 2019;
- 1.4.2. 28 November 2019; and
- 1.4.3. 13 December 2019;

1.5. By reason of her conduct in respect of any or all of the matters set out at 2.1 above, Miss Chen is:

1.5.1. Guilty of misconduct, pursuant to byelaw 8(a)(i); or in the alternative

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

BACKGROUND

- 7. Miss Chen registered as an ACCA student on 26 March 2019.
- 8. The case concerns an allegation of dishonestly selling ACCA computer-based exam ("CBE") questions on a Chinese consumer to consumer marketplace website.
- 9. ACCA CBE Delivery team received a referral from the British Council office in China. The British Council raised concerns about integrity of ACCA's CBE exams after they found CBE questions were offered for sale online at www.1688.com. The British Council supplied ACCA with a copy of the screen capture of the ad where it appears F1, F2 and F3 CBE question are offered for sale.

SUBMISSIONS

Allegation 1.1 – Being concerned in an offer to sell ACCA F1, F2 and F3 CBE questions

- 10. ACCA submitted that Allegation 1.1 concerned Miss Chen being involved in the offer to sell ACCA F1, F2 and F3 CBE questions on www.1688.com – a Chinese based consumer to consumer marketplace website.

11. ACCA relied upon the screen capture produced by ACCA CBE Delivery as evidence that Miss Chen in an offer to sell ACCA F1, F2, and F3 CBE questions on www.1688.com. While Miss Chen's name does not appear in the CBE "Provisional Result Notification" sheet and ACCA noted that various parts of the result sheet had been obscured, ACCA contended that the result sheet contained a unique access token ID, namely: "8rqSHf8Z25QBpdvd", in the bottom left hand corner. This enabled identification of the student. ACCA asserted that access token ID 8rqSHf8Z25QBpdvd relates to FAB – Accountant in Business CBE attempt at Golden Finance Hang Zhou on 24 May 2019 and is unique to "ACCA ID 4558984, Miss Chen".
12. Person A, an ACCA Senior CBE (Computer Based Exam) Administrator, reviewed images supplied by the British Council in China including the copy screen capture of the online advert and accompanying images and confirmed that the Token ID number shown on the image was unique to Miss Chen. Person A also detailed the CBE examination process. ACCA submitted that it was more likely than not that Miss Chen took the exam on 24 May 2019 and used a device to take the photographs of exam questions that appeared on the website adjacent to her "Provisional Result Notification" sheet. Miss Chen's unique ID was on the Result Notification sheet and whether she had placed them on the website herself or not, ACCA submitted it was reasonable to infer that she was, therefore, concerned in the offer to sell the exam questions.

Allegation 1.2 - Dishonesty

13. Further, ACCA submitted that the reasonable inference was that Miss Chen had taken the photographs and thus copied the exam questions. Such conduct was in breach of the Exam Regulations. The website showed that the questions could be purchased. ACCA submitted that an involvement in an offer to sell CBE questions constituted behaviour that the student must know is wrong. The taking and more particularly, the sharing of exam questions in this manner undermines the integrity of the exam in question and more generally ACCA's qualifications, causing potentially considerable reputational harm. It contended that sight of questions set in past papers may give a student an advantage because there is a probability the question will appear during an exam again. It contended, therefore, that her conduct was dishonest as she offered to assist other examinees gain an unfair advantage in return for payment.

Allegation 1.2

14. ACCA also submitted that such conduct, as an alternative, was contrary to the Fundamental Principle of Integrity.

Allegation 1.3

15. ACCA also submitted that such conduct amounted to misconduct.

Allegation 2 – Failure to Cooperate with ACCA's Investigation

16. ACCA sent e-mail correspondence to Miss Chen's registered e-mail address as set out under regulation 15 of The Membership Regulations 2014.
17. Miss Chen failed to respond to ACCA's investigation in this matter. ACCA submitted that Miss Chen's failure to co-operate fully with ACCA's investigation into her conduct demonstrated a lack of professionalism and a disregard for ACCA's regulatory process. Miss Chen's failure to respond to questions asked by ACCA into her 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 organizations, 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.
18. ACCA submitted that such non-cooperation by a professional with her regulator amounted to misconduct or in the alternative was a breach of the bye law.

MISS CHEN'S SUBMISSIONS

19. There were no submissions from Miss Chen.

DECISION ON ALLEGATIONS AND REASONS

20. 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 Miss Chen's absence added nothing to ACCA's case.
21. The Committee heard that there had been no previous findings against Miss Chen and accepted that it was relevant to put her good character into the balance in her favour.

DECISION ON FACTS

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

Allegation 1.1

23. The Committee was satisfied that Miss Chen sat the Accountant in Business CBE attempt at Golden Finance Hang Zhou on 24 May 2019. It accepted the evidence of Mr Docherty as accurate and reliable. It further accepted it was more likely than not that the images he refers to were for sale on the www.1688.com website. While it noted that Mr Docherty had not identified the whether the screenshot of the exam questions came from the exam Miss Chen sat on 24 May 2019, the questions were proximate to the Result Notification sheet that the Committee accepted was Miss Chen's. The Committee considered it a reasonable conclusion that the Result Notification sheet was so presented to validate the questions as genuine ACCA exam questions and to give any potential purchasers an assurance that the questions were genuine. While it was possible that a third party had obtained Miss Chen's result sheet and posted it on the website with the questions without her knowledge, the Committee concluded, in the absence of any evidence to support this proposition, that this scenario was less likely than ACCA's case and that Miss Chen was involved in the offer. It was satisfied that it was reasonable to infer on the balance of probabilities that Miss Chen

was involved in offering these images of exam questions on that website for sale. Accordingly, the Committee was, therefore, satisfied that Allegation 1.1. was proved.

Allegation 1.2

24. The Committee next asked itself whether the proven conduct in Allegation 1.1 was dishonest.
25. The Committee had no evidence from Miss Chen as to what Miss Chen's belief was as to the facts. However, it was satisfied that by being concerned in an offer to sell exam questions for financial reward on a marketplace website where other examinees could use them to gain an unfair advantage, were facts on which the Committee could reasonably infer that Miss Chen knew to be conduct that was wrong. It was satisfied that she knew she could not take photographs of exam questions. It considered it significant that attempts had been made to obliterate Miss Chen's identity from the result sheet. It had no hesitation in determining that Miss Chen's conduct at the time was dishonest according to the standards of ordinary decent people. Accordingly, it was satisfied that Allegation 1.2 was proved.
26. The Committee next asked itself whether, having dishonestly been involved in the offer of exam questions for sale, Miss Chen was guilty of misconduct.
27. 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 Miss Chen's actions brought discredit on her, the Association and the accountancy profession. It was satisfied that dishonestly being concerned with selling exam questions of professional exams to enable others to gain an unfair advantage was deplorable conduct and reached the threshold for misconduct.
28. In the light of its judgment on Allegation 1.2.1, no finding was needed upon Allegation 1.2.2.

Allegation 2

29. 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 Miss Chen to cooperate fully with ACCA in the investigation of any complaint. It was satisfied that Miss Chen made no response to ACCA's correspondence requesting her cooperation on the 06 November 2019, 28 November 2019, and 13 December 2019. It was further satisfied that these non-responses amounted to failures as Miss Chen had a duty to respond and that, therefore, she breached the obligation under the Regulations and that Allegation 2 was proved.

Misconduct

30. 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 Miss 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

31. The Committee noted its powers on sanction were those set out in Regulation 12(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.
32. The Committee considered that the dishonest conduct here was serious. The Committee had regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. Trust and honesty are fundamental requirements of any professional. Dishonesty by a member of the accountancy profession undermines its reputation and public confidence in it.

33. The mitigating factors before the Committee were:

- Miss Chen's previous good character.

34. The aggravating factors the Committee identified were:

- That Miss Chen's actions were deliberate and planned;
- The conduct was dishonest and challenged the integrity of the examination system;
- The conduct was for financial gain.

35. The Committee was mindful that not every case of dishonesty must result in the most serious sanction, and that each case is fact specific. Nonetheless, it accepted that a finding of dishonesty ordinarily lies at the top of the spectrum of misconduct.

36. Given the Committee's view of the seriousness of her conduct, which was dishonest and its detrimental effect upon the reputation of the profession, it was satisfied that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to highlight to the profession and the public the gravity of the proven conduct.

37. The Committee determined that Miss Chen's behaviour was fundamentally incompatible with her remaining on the student register of ACCA. The conduct was dishonest and is a serious departure from professional standards. The Committee was satisfied that the only appropriate and proportionate sanction was that she be removed from the student register. The Committee did not consider that it was necessary to combine this with an order that Miss Chen may not apply for readmission for a further period beyond the minimum period.

COSTS AND REASONS

38. ACCA claimed costs of £6,172 and supplied a schedule of its costs. Miss Chen has not provided any statement of her means. The Committee decided that it was appropriate to award costs in this case, as it was properly brought, and was persuaded that the costs claimed by ACCA were justified. The Committee had no evidence of Miss Chen's means, but made a reduction on the assumption that her means were likely to be limited. It further discounted the sum claimed, as the Case Presenter was not engaged for 6 hours claimed in the schedule, as the case concluded earlier than anticipated. It was satisfied in these circumstances that the sum of £4,000 was appropriate and proportionate. Accordingly, it ordered that Miss Chen pay ACCA's costs in the amount of £4,000.

EFFECTIVE DATE OF ORDER

39. 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 as described in the Appeal Regulations. The Committee determined it was not necessary to impose an immediate order.

Maurice Cohen
Chair
16 July 2020