

Think Ahead

ACCA

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

In the matter of: Miss Miao Tian

Heard on: Thursday, 28 May 2020

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

Committee: HH Suzan Matthews QC (Chairman)
Ms Beth Picton (Lay)
Mr Alastair Papps (Accountant)

Legal adviser: Mr David Marshall

Persons present

And capacity: Miss Phillip Law (ACCA Case presenter)
Mr Jonathan Lionel (Hearings Officer)

Observers: Ms Nora Nanayakkara (ACCA Appointments Board)

Summary: Removal from the Student Register

Costs: £5,500.00

1. The Committee heard an allegation of misconduct against Miss Tian. Mr Law appeared for ACCA. Miss Tian was not present and not represented.

ALLEGATION(S)/BRIEF BACKGROUND

2. Miss Tian, who is based in the People's Republic of China, has been a student of ACCA since September 2018. She has passed four ACCA examinations and has six exemptions. On 03 June 2019, she sat for a further examination. This was a 'Sessional Computer-Based Exam' (SCBE). The allegations against her related to that examination:

Allegations

- (a) During an SCBE Audit and Assurance examination on 03 June 2019, Miss Miao Tian was in possession of unauthorised materials in the form of notes under her keyboard, contrary to Examination Regulations 4 and/or 5;
- (b) Miss Miao Tian intended to use any or all of the items set out at (a) above to gain an unfair advantage, contrary to Examination Regulation 7a;
- (c) Miss Miao Tian's conduct in respect of (b) above was:
 - (i) Dishonest, in that Miss Miao Tian intended to use any or all of the unauthorised materials which she had at her exam desk to gain an unfair advantage; or in the alternative
 - (ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2019);
- (d) By reason of her conduct, Miss Miao Tian is:
 - (i) Guilty of misconduct pursuant to byelaw 8(a)(i), in respect of any or all of the matters set out at (a)-(c) above; or
 - (ii) Liable to disciplinary action pursuant to byelaw 8(a)(iii), in respect of (a-c) above.

PROCEEDING IN ABSENCE

3. The Committee was satisfied that Miss Tian had been served with the documents

required by regulation 10(7) of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 in accordance with Regulation 22. The required documents were contained in the papers before the Committee. There was evidence that they were sent by email on 30 April 2020 to an email address notified by Miss Tian to ACCA as an address for all correspondence and used by her in previous exchanges with ACCA.

4. With regard to exercising its discretion, the Committee saw communications from Miss Tian showing that she was aware that there were proceedings against her. She did not specifically respond to the notice of hearing or a further email from the Hearings Officer asking if she would be attending. Nevertheless, the emails were delivered, and the Committee was satisfied that she knew, or ought to have known, of the date of this hearing and that she could attend by remote link. The Committee concluded that she had decided not to attend.
5. The Committee was satisfied that Miss Tian had voluntarily absented herself and that no purpose would be served by an adjournment. The Committee was satisfied that it was in the public interest to proceed. The Committee determined to proceed in Miss Tian's absence, taking account of her written representations.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

6. The Committee heard no oral evidence but studied a bundle of documents including statements from the exam Invigilator, from Miss Tian and others. It considered the submissions of Mr Law and the emails sent by Miss Tian in relation to the allegations.
7. The bundle included a copy of an Examination Attendance Docket. It became clear in the hearing that this related to a different examination, held on 07 June 2019. The Committee disregarded it.
8. The relevant examination took place on 03 June 2019 starting at 14:00. On the same day, one of the Invigilators completed an SCRS 1B form reporting an incident at about 14:34. This stated:

"After the exam started, I was walking through the room and I saw this candidate was typing normally. When I'm pay more attention on her desk, I saw something white under the keyboard and docket next to the keyboard.

I found these materials under the keyboard and I picked the papers up and ask her

“what’s this?” And she said “I don’t know, I have no idea where these come from”

9. Miss Tian completed a form SCRS 2B on the same day. The form asked her to confirm whether she was in possession of unauthorised materials. She did not answer that question. However, in answer to other questions she stated:

“Because I arrive at examination room is late. My ... [illegible] paper is not belongings. I forget it. I think that is not have any effect with my results. So, I think my action is not materials. ... In next examination, I will obey the rules. And carefully.”

10. The Committee interpreted this to mean that Miss Tian did not dispute that she had the materials described by the Invigilator at her desk. She seemed to be asserting that it was a mistake in that she forgot to leave them with her other belongings outside the examination room. She also seemed to be saying that they were not relevant. She promised not to do this again.
11. Miss Tian’s only response to the allegations following the exam were in an email to ACCA dated 07 November 2019:

“My behavior is incorrect, I did not follow the acca test discipline, but I want to emphasize My behavior has not had any effect on my test scores. In the future, I will strictly ask myself to abide by the exam discipline of acca, ...”

12. This was consistent with the Committee’s interpretation of the SCRS 2B form.
13. Allegation (a) referred to Examination Regulations 4 and 5. Regulation 4 defined ‘books, notes or other materials’ (except those specifically authorised) as ‘unauthorised materials’. The effect of Regulations 4 and 5 was that a candidate was not allowed to take unauthorised materials to the exam desk or to possess, use or intend/attempt to use unauthorised materials while the exam was in progress.
14. The Committee was satisfied, on the basis of the documents, that Miss Tian was in possession of the papers described by the Invigilator at her exam desk. A copy was in the bundle. It consisted of three pages typed on both sides, mainly in English but with some Chinese also. Although it was difficult to read the copies provided, they clearly contained notes relating to accountancy matters. The Committee was, therefore, satisfied that Miss Tian was in possession of unauthorised materials during the examination. The Committee found Allegation (a) proved.

15. The effect of Examination Regulation 7(a) was that if the unauthorised materials were relevant to the syllabus being examined, it would be presumed that Miss Tian intended to use them to gain an unfair advantage in the exam . ACCA obtained an 'Irregular Script' report dated 01 July 2019 which stated that the notes were relevant to the syllabus, were relevant to this particular exam and had been used when the student attempted the exam. The author set out examples where Miss Tian's answers to exam questions were identical to passages in the notes. The Committee accepted this evidence and found that the presumption applied.
16. The Committee proceeded on the basis that Miss Tian's case was that she had brought the notes to her exam desk by mistake. It took into account that when first challenged she said she did not know what they were. She later said that the presence of the notes did not affect her scores, which must have meant either that she did not use them or that they were not relevant. The Committee rejected all those statements. It fully accepted the evidence of the Invigilator and the findings set out in the irregular script report. These showed that Miss Tian had brought the notes to her desk and made use of them during the exam. She must have done so in order to obtain an unfair advantage. The Committee found Allegation (b) proved.
17. The Committee went on to consider whether Miss Tian's actions were dishonest. As a student Miss Tian must have known that bringing notes into this exam would be cheating. She accepted in her SCRS 2B form that she was present for the Supervisor's announcement immediately before the exam. That announcement included a reminder to remove all items from the exam desk. She can have been in no doubt about the position. Her actions in using written notes to help her in the exam can only be described as deliberate cheating. The Committee had no doubt that such actions were dishonest. The Committee found Allegation (c)(i) proved. It did not need to consider Allegation (c)(ii), which was in the alternative.
18. The Committee was satisfied that Miss Tian's dishonest behaviour amounted to misconduct. Cheating in examinations is one of the most serious breaches that a student can be guilty. The Committee found Allegation (d)(i) proved. It did not need to consider Allegation (d)(ii), which was in the alternative.

SANCTION(S) AND REASONS

19. Having found the main allegations proved, the Committee considered what sanction, if any, to impose.

20. The Committee first considered whether there were any aggravating or mitigating factors.
21. With regard to mitigating factors, Miss Tian had no previous findings against her. She had made some, limited, admissions and had cooperated to some extent with the investigation. The Committee was not aware of any other mitigation and rejected Miss Tian's statement that she had the notes with her by mistake.
22. With regard to aggravating factors, any form of exam cheating is a serious matter. It is amongst the most serious types of misconduct that a student can commit. It undermines the system of professional qualification and is unfair and demoralising to other students. However, the Committee did not identify any aggravating factors which made this case significantly worse than other cases of its kind.
23. The Committee next considered the relevant sanctions in ascending order.
24. The Guidance states that admonishment and reprimand are appropriate where *'the conduct is of a minor nature'*. The dishonesty in this case was far too serious to be dealt with by these sanctions.
25. The Guidance states that the sanction of Severe Reprimand *'would usually be applied in situations where the conduct is of a serious nature but there are particular circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public, and there is evidence of the individual's understanding and appreciation of the conduct found proved'*. The key factors set out in the Guidance were not present in this case. The misconduct was deliberate. Exam cheating causes harm by subverting the examination system. It is unfair to other students. Miss Tian provided no references and no information about her past, current or future circumstances. She demonstrated no insight or remorse. The Committee concluded that her cheating was so serious that the sanction of Severe Reprimand would not be adequate.
26. The Committee next considered the sanction of removal from the student register. It concluded that Miss Tian's behaviour was fundamentally incompatible with being a student of ACCA. The purpose of registering as a student is to learn the skills of an accountant and demonstrate such knowledge and skills in fair examinations. Deliberate cheating undermines the system of student education. The Committee was satisfied that removal from the student register was the minimum sanction it could impose.
27. The Committee considered whether it was necessary to make an order extending the

period before Miss Tian could apply to be readmitted. Given that she is at a very early stage in her career, it decided that it was not necessary to do so.

COSTS AND REASONS

28. Mr Law applied for costs totalling £6,999. The Committee was satisfied that these proceedings were properly brought and that ACCA was entitled in principle to a contribution to its costs.
29. With regard to the amount, Mr Law pointed out that the hearing would take less time than estimated. The costs, therefore, had to be reduced. Miss Tian had not submitted a statement of means so there was no basis on which the Committee could assess her ability to pay. It was aware that average earnings in China are lower than in the UK, but the Committee could not make any assumption about Miss Tian's earnings or personal means.
30. Taking a broadbrush approach, the Committee assessed the contribution at £5,500.

ORDER

31. The Committee ordered as follows:
 - (a) Miss Tian shall be removed from the student register;
 - (b) Miss Tian shall make a contribution to ACCA's costs of £5,500

EFFECTIVE DATE OF ORDER

32. This order shall take effect from the date of the expiry of the appeal period referred to in the Appeal Regulations.

HH Suzan Matthews QC
Chair
28 May 2020