

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Ms Vivian Cheong Chin Wen
Heard on:	Wednesday, 17 June 2020
Location:	Remotely via Skype
Committee:	Ms Carolyn Tetlow (Chair) Mr Arif Kamal (Accountant) Mr Nigel Pilkington (Lay)
Legal Adviser:	Mr Iain Ross
Persons present and capacity:	Mr Benjamin Jowett (ACCA Case Presenter) Ms Nkechi Onwuachi (Hearings Officer) Ms Anna Packowska (Hearings Officer)
Observers:	None
Outcome:	Student removed from student register. Pay costs to ACCA in the sum of £1,250.00

1. The Committee heard an allegation of misconduct against Ms Chin Wen. The hearing was conducted remotely through Skype for Business (Audio only) so as to comply with the COVID 19 Regulations. Mr Jowett appeared for ACCA. Ms Vivian Cheong Chin Wen was present by telephone and was not represented. The Committee had a main bundle of papers numbered pages 1 to 40, an additional bundle numbered pages 1 to 5 and a separate service bundle numbered pages 1 to 14.

ALLEGATION / BRIEF BACKGROUND

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2. Ms Vivian Cheong Chin Wen registered as a student member of ACCA on 16 January 2019. ACCA alleged that during a Financial Reporting Examination on 6 June 2019, Ms Vivian Cheong Chin Wen was in possession of unauthorised materials in the form of notes which had been found under her chair which, it was alleged, she intended to use in order to gain an unfair advantage.

Allegation 1

- a. During a Financial Reporting examination on 6 June 2019, Ms Vivian Cheong Chin Wen was in possession of unauthorised materials in the form of notes under her chair, contrary to Examination Regulations 4 and/or 5.
- b. Ms Vivian Cheong Chin Wen intended to use any or all of the items set out at 1(a) above to gain an unfair advantage, contrary to Examination Regulation 7a;
- c. Ms Vivian Cheong Chin Wen's conduct in respect of 1(b) above was:
- (i) Dishonest, in that Ms Vivian Cheong Chin Wen intended to use any or all of the unauthorised materials which she had under her chair 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, Ms Vivian Cheong Chin Wen 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(c) above; or

- (ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of 1(a) (i) above.

DECISION ON FACTS / ALLEGATION AND REASONS

3. ACCA did not call any witnesses. It relied on statements and reports from officials involved in the examination process and information from Ms Vivian Cheong Chin Wen herself. It was not disputed that Ms Vivian Cheong Chin Wen attended the British Council Penang exam centre on 06 June 2019 in order to sit the Financial Reporting examination. The exam commenced at 14.00 hours and was due to last for 3 hours.
4. The exam centre Invigilator stated in her SCRS1B form, completed on the day of the exam that:

“A piece of paper was seen on the floor and it felt suspicious as it was already near the end of the exam. The floor was clear of any objects during the start of the test.... After invigilators were alerted of this case, the candidate was found checking her sleeves and the floor upon the exam’s completion. Invigilators also confirmed that the notes are accounting formula... Candidate was asked to retain (sic) after the exam. Candidate was asked if the unauthorised material belongs to her but was denied”.

5. Due to Ms Vivian Cheong Chin Wen’s initial denial that the unauthorised material belonged to her, she was not given the SCRS2B form to complete.
6. In the Examiner’s Irregular Script Report signed and dated 02 July 2019, the Examiner confirmed that the material was relevant to the syllabus, that it was relevant to the particular examination and that the notes had been used. The Examiner also stated:

“While it is impossible to be certain if the candidate has used these notes, the notes relate to ratio formulas which were on this exam. In

this exam the candidate scored full marks on the ratios section, which suggests that the ratios could have been used”.

7. On 12 November 2019, Ms Vivian Cheong Chin Wen sent an email to ACCA in which she stated, *“Sorry for the late reply due to some personal matter. I’m apologised to say that the unauthorised material was belong to me”.*
8. In her oral evidence to the Committee, Ms Vivian Cheong Chin Wen accepted that the unauthorised material was revision notes created by her, and that she had brought them to the exam centre along with other notes. She said in her evidence that she thought she had placed the notes inside her pencil case before the exam. She then put the pencil case in her bag which was left in a separate room. She was adamant that she had not brought the notes into the exam hall and did not know how the notes happened to be found underneath her chair. She said in oral evidence that, *“Although the materials belonged to me, I don’t know why they ended up there”.*
9. The Committee found that the explanation given by Ms Vivian Cheong Chin Wen lacked credibility and was not true. The Committee did not accept her evidence; the notes were found underneath Ms Vivian Cheong Chin Wen’s chair and could only have been brought into the exam room by her.
10. Accordingly, the Committee concluded that Ms Vivian Cheong Chin Wen had intentionally brought unauthorised materials into the exam. The Committee also found that by taking unauthorised materials, namely notes containing formulae relating to relevant topics to her exam desk and keeping them with her during most of the exam, Ms Vivian Cheong Chin Wen was in breach of Examination Regulations 4 and 5. It therefore found Allegation 1(a) proved. The Committee also found that the notes were relevant, both to the syllabus and to the particular exam.
11. Examination Regulations 7(a) and (b) state that where such breaches have taken place, it is assumed that the student intended to use the materials or item to gain an unfair advantage in the exam, unless the student proves that she did not intend to use the unauthorised materials or item to gain such an unfair

advantage. The Committee was satisfied that Ms Vivian Cheong Chin Wen had not rebutted the presumption and had intended to use the unauthorised materials, even though there was no direct evidence that she had actually done so.

12. The Committee found it proved, on the balance of probabilities, that Ms Vivian Cheong Chin Wen had intended to use the unauthorised materials in order to obtain an unfair advantage. The Committee found Allegation 1(b) proved.
13. On the basis of the findings already made, the Committee was satisfied that Ms Vivian Cheong Chin Wen intended to cheat in the exam. It was quite satisfied that intending to cheat amounted to dishonest behaviour. Accordingly, the Committee found Allegation 1(c)(i) proved and did not consider the alternative.
14. Having found that she acted dishonestly, the Committee had no doubt that Ms Vivian Cheong Chin Wen's conduct amounted to misconduct. Cheating or intending to cheat in exams is one of the most serious breaches of professional behaviour that a student can commit. The Committee therefore found Allegation 1(d)(i) proved and did not consider the alternative.

DECISION ON SANCTION AND REASONS

15. The Committee heard submissions from Mr Jowett on behalf of ACCA. The Committee received advice from the Legal Advisor and had regard to the Guidance for Disciplinary Sanctions.
16. The Committee noted that the matters found proved against Ms Vivian Cheong Chin Wen were very serious. The Committee considered the aggravating factors to be that Ms Vivian Cheong Chin Wen's misconduct was premeditated, intended for her own benefit and undermined the trust which the public rightly have in ACCA. Ms Vivian Cheong Chin Wen's dishonest conduct was directly related to her student registration, which was only in its sixth month of existence at the time. As a mitigating factor, the Committee took into account that Ms

Vivian Cheong Chin Wen had engaged with the proceedings, albeit at a very late stage.

17. The Committee was not satisfied that Ms Vivian Cheong Chin Wen had demonstrated any meaningful insight or remorse, nor had she explained why she had attempted to cheat in an examination at a very early stage of her intended career.
18. The Committee considered each available sanction in ascending order of seriousness, having concluded that taking no further action was not appropriate. The Committee also considered that issuing an admonishment or a reprimand would not be sufficient or proportionate, given the gravity of the matters proved, and would not protect the public interest.
19. The Committee carefully considered whether a severe reprimand would be sufficient and proportionate, or whether removal from the Student Register was required. It had careful regard to the factors applicable to each of these sanctions set out in the Sanctions Guidance.
20. The Committee had particular regard to C4.2 of the Indicative Sanctions Guidance which states:

“Having considered the general principles and factors set out above, the Committee must decide whether a Severe Reprimand is a sufficient sanction, either on its own or in combination with any other order available under the rules. If the Committee decides that a Severe Reprimand (on its own or combined with any other order it could impose) is sufficient, it should stop at this point and impose this sanction”.

The Committee considered that most of the factors applicable to a severe reprimand were not applicable in this case, particularly the lack of insight and remediation, the lack of relevant testimonials and Ms Vivian Cheong Chin Wen’s limited co-operation, which occurred only at a very late stage.

21. The Committee considered the other orders which it could impose in

combination with a severe reprimand and concluded that such a course of action would not be appropriate or sufficient to protect the public interest. The Committee had regard to E 2.2 of the Guidance for Disciplinary Sanctions which states:

“The public is entitled to expect a high degree of probity from a professional who has undertaken to abide by a code of ethics. The reputation of ACCA and the accountancy profession is built upon the public being able to rely on a member to do the right thing in difficult circumstances. It is a cornerstone of the public value which an accountant brings.”

22. The Committee was mindful that the sanction of removal from the student register is the most serious sanction which could be imposed. The Committee also took into account the guidance that this sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a member. The Committee was satisfied that Ms Vivian Cheong Chin Wen’s misconduct reached that high threshold.
23. For all of the above reasons, the Committee concluded that the only appropriate and proportionate sanction was removal from the student register. The Committee did not deem it necessary to impose any minimum period before which Ms Vivian Cheong Chin Wen cannot re-apply for admission as a student member.

DECISION ON COSTS AND REASONS

24. ACCA applied for costs in the sum of £6,252.00. The Committee heard oral evidence from Ms Vivian Cheong Chin Wen as to her limited means, although the Committee was not provided with a statement of means. However, the Committee accepted that Ms Vivian Cheong Chin Wen has limited means, given that she works only part-time and has to repay student debts. Taking into account her ability to pay costs, the Committee ordered that Ms Vivian Cheong Chin Wen pays ACCA’s costs in the sum of £1,250.00.

25. The Committee did not deem it necessary to make any immediate orders.

Ms Carolyn Tetlow
Chair
17 June 2020