

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Xu Chenhui

Heard on: Tuesday, 26 May 2020

Location: The hearing was conducted remotely by Skype via ACCA's Offices, The Adelphi, 1-11 John Adam Street, WC2N 6AU

Committee: Mr James Kellock (Chair)
Ms Beth Picton (Accountant)
Miss Catherine Brown (Lay Member)

Legal Adviser: Mr Richard Ferry-Swainson

**Persons present
and capacity:** Mr Phillip Law (ACCA Case Presenter)
Ms Nkechi Onwuachi (Hearings Officer)
Ms Geraldine Murray (Assisting Hearings Officer)

Observers: Mr Antony Townsend (Appointments Committee)

Summary: All facts found proved. Student removed from register. Costs ordered.

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INTRODUCTION/SERVICE OF PAPERS

1. The Disciplinary Committee (“the Committee”) convened to consider an Allegation against Mr Xu, who did not attend and was not represented.
2. The papers before the Committee were in a bundle, numbered 1 to 51, and a costs schedule, numbered 1 to 5. There was a service bundle, numbered 1 to 18.
3. Mr Law made an application to proceed in the absence of Mr Xu.

PROCEEDING IN ABSENCE

4. The Committee first considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (“the Regulations”). The Committee took into account the submissions made by Mr Law on behalf of ACCA and also took into account the advice of the Legal Adviser.
5. Included within the service bundle was the Notice of Hearing dated 24 April 2020, thereby satisfying the 28-day notice requirement, which had been sent to Mr Xu’s email address as it appears in the ACCA register. The Notice included details about the time, date and remote venue for the hearing, and also Mr Xu’s right to attend the hearing, by telephone or video link, and to be represented, if he so wished. In addition, the Notice provided details about applying for an adjournment and the Committee’s power to proceed in Mr Xu’s absence, if considered appropriate. There were receipts confirming the emails had been delivered to Mr Xu’s registered email address.
6. The Committee was satisfied that the Notice had been served in accordance with the Regulations, which require ACCA to prove that the documents were sent, not that they were received. Having so determined, the Committee then considered whether to proceed in Mr Xu’s absence. The Committee bore in mind that although it had a discretion to proceed in the absence of Mr Xu, it should exercise that discretion with the utmost care and caution, particularly as Mr Xu was unrepresented.

7. In a number of emails sent to Mr Xu by the Hearings Officer, he was asked if he would be attending the hearing. Mr Xu did not respond to any of those emails.
8. The Committee noted that Mr Xu faced serious allegations of dishonesty, and that there was a clear public interest in the matter being dealt with expeditiously. The Committee considered an adjournment would serve no useful purpose, because it seemed unlikely that Mr Xu would attend on any other occasion and he had not applied for one. In light of his complete lack of engagement throughout the investigation of this matter, the Committee concluded that Mr Xu had voluntarily absented himself from the hearing and thereby waived his right to be present and to be represented at this hearing.
9. In all the circumstances, the Committee decided that it was in the interests of justice that the matter should proceed, notwithstanding the absence of Mr Xu. No adverse inference would be drawn from his non-attendance.

APPLICATION TO AMEND THE ALLEGATIONS

10. At the outset of the hearing, Mr Law made an application to amend Particular 1(b)(i) to indicate that one or more photographs were taken of one or more exam questions. He said this was to more accurately reflect the evidence. Mr Law also applied to amend 1(c)(i), which was grammatically incorrect and poorly worded, to read as follows: *“Dishonest in that he knew the conduct referred to in paragraphs 1(a) and 1(b) was an attempt to obtain an unfair advantage in his FMA CBE; and/or”*. He also applied to correct a typographical error in Particular 1(d)(ii), where the word *“law”* was mis-spelt. In addition, Mr Law applied to remove the words *“to all”* after *“any”* in Particular 2(a), which were duplicated. Finally, he applied to add to Particular 2(b) the missing second limb, namely that in the alternative Mr Xu was liable to disciplinary action, pursuant to bye-law 8(a)(iii).
11. Mr Law informed the Committee that Mr Xu had been sent emails on 21 and 25 May 2020 informing him of ACCA’s intention to apply to amend the Allegation. He was also sent the final version of the application this morning, detailing the amendments requested. Mr Xu had not responded or raised any objection to the proposed amendments.

12. The Committee heard and accepted the advice of the Legal Adviser and decided it was in the interests of justice to allow all the amendments requested. Most had clearly been either minor drafting or grammatical errors which needed correcting. The Committee did not consider that any of the requested amendments would prejudice Mr Xu. The Committee did note that, in allowing the amendment to Particular 2(b), it allowed ACCA to have an alternative if the Committee did not find misconduct in relation to Particular 2. However, it was clear that, in accordance with ACCA's Regulations, this type of allegation could be brought and Mr Xu had been notified of this proposed amendment, albeit at a late stage. If he had felt there was any unfairness in allowing the requested amendments, he could have chosen to object to them and he had not done so.

ALLEGATIONS/BRIEF BACKGROUND

13. It is alleged that Mr Xu is liable to disciplinary action on the basis of the following Allegation (as amended):

Allegation

Particular 1:

1. During an ACCA Management Accounting (FMA) computer-based exam (CBE) on 03 August 2019:
 - a. Mr XU Chenhui / 许辰晖 used and/or was in possession of a device capable of taking photographs which he had at or on his desk.
 - b. Mr XU Chenhui took one or more photographs of an ACCA Management Accounting (FMA) computer-based exam (CBE) question or questions using the device described in 1a.
 - c. Mr XU Chenhui's conduct in respect of any or all of the matters set out at 1(a) and/or 1(b) above was:

- (i) Dishonest in that he knew the conduct referred to in paragraphs 1(a) and 1(b) was an attempt to obtain an unfair advantage in his FMA CBE; and/or
 - (ii) Contrary to the Fundamental Principle of Integrity
- d. By reason of Mr XU Chenhui's conduct he is:
- (i) Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of 1(a) and/or 1 (b);
 - (ii) Liable in the alternative to disciplinary action pursuant to bye-law 8(a)(iii), in respect of 1(a), only.

Particular 2

2. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Mr XU Chenhui has failed to co-operate fully with the investigation of a complaint in that:
- a. Mr XU Chenhui failed to respond at all to any of ACCA's correspondence dated:
 - (i) 02 October 2019;
 - (ii) 24 October 2019; and
 - (iii) 01 November 2019;
 - b. By reason of his conduct in respect of any or all of the matters set out at 2(a) above, Mr XU Chenhui is:
 - (i) Guilty of misconduct, pursuant to bye-law 8(a)(i); or

- (ii) Liable in the alternative to disciplinary action pursuant to bye-law 8(a)(iii).

14. Mr Xu registered as an ACCA student on 16 October 2018.
15. On 03 August 2019, ACCA received an email from an individual, who asked to remain anonymous - Person A. Person A raised concerns about the integrity of ACCA's Computer-based exams (CBE) after they witnessed a student taking photos of the CBE questions during an exam (on 03 August 2019).
16. Person A had found an exchange where a student had posted images of their CBE questions and asked for assistance in a WeChat group. There was also an exchange where it appeared an answer was supplied. Person A provided ACCA with screen captures of the WeChat exchanges and images. These were reviewed by ACCA's CBE Delivery Team, which identified ACCA ID: [REDACTED], Mr Xu Chenhui, from one of the photographs submitted by Person A.
17. Person A stated the following in their referral:

"Today [03 August 2019], I saw someone took pictures of the exam questions showing on the computer screen and posted them to a chat group for answers. I think this behavior has seriously violated the examination discipline and would create unfairness. As a professional accountant, the ethics (especially the integrity) are the most important assets of professional. This is not the first time I have seen such phenomenon, and I hope the ACCA authority can pay more attention to resolve this serious problem. It is necessary to catch this breach to avoid (sic) it being able to occur in the future."

18. Following the referral from Person A described above, an ACCA Senior CBE Administrator reviewed the screen captures provided by Person A. In his statement the Administrator explains:

- a. the student's ACCA registration number was found in one of the images supplied by Person A, at the top of the screens which enabled the student to be identified;
 - b. the licensed on-demand centers could also be identified, as ACCA's internal databases enables the location of all centers at which students attempt their exams to be identified;
 - c. the header shows the CBE exam sat was FMA – Management Accounting;
 - d. the student registration number at the top of image file IMG_2389.JPG is redacted. This is the ACCA registration number of Mr Xu Chenhui;
 - e. he also reviewed ACCA's internal database which showed that Mr Xu Chenhui sat the FMA – Management Accounting CBE on 03 August 2019;
 - f. he reviewed the question in image file: IMG_2389.JPG Section B, question 38 against the FMA – Management Accounting exam records of Mr Xu Chenhui and confirmed that that was a question Mr Xu Chenhui was required to answer in his FMA CBE exam on 03 August 2019.
19. ACCA records shows that Mr Xu passed the Management Accounting CBE sat on 3 August 2019, with a mark of 54 out of 100.
20. ACCA wrote to Mr Xu at his registered email address on the dates set out in Particular 2 above. The Investigations Officer confirmed the e-mail address the correspondence was sent to matched Mr Xu's registered e-mail address as it appeared in ACCA's members' databases. No response was received to these emails. Mr Xu was warned that a failure to respond would result in an allegation of failing to co-operate being raised against him.

DECISION ON FACTS/ALLEGATIONS AND REASONS

21. The Committee considered with care all the evidence presented, and the submissions made by Mr Law. The Committee accepted the advice of the Legal Adviser.
22. ACCA relied on the anonymous hearsay evidence of Person A and the screenshots provided by them, together with the evidence of an ACCA Senior CBE Administrator who reviewed the screenshots provided by Person A. The Committee treated the anonymous hearsay evidence of Person A with caution, and only relied on it where it was supported by other evidence, for example the screenshot with Mr Xu's name on it. The Committee was content to accept the evidence of the Administrator, who had provided a signed witness statement containing a declaration of truth, and who relied on records held by ACCA.

Particulars 1(a) & (b)

23. The Committee accepted the cogent and compelling documentary evidence that Mr Xu, whilst sitting the FMA CBE on 03 August 2019, was in possession of a device capable of taking photographs, and that he used it to take at least one photograph of one of the exam questions. This was clearly shown by the screenshot provided by Person A with Mr Xu's name on it, and the Committee was satisfied, by the evidence of the Senior CBE Administrator, that the person sitting the exam was Mr Xu. The Committee considered it to be a reasonable inference that it was Mr Xu who took the photograph with his name and ACCA registration number on it. The Committee also accepted the evidence of the Administrator that the picture showed an exam question that formed part of the exam that Mr Xu was sitting. There was also evidence that Mr Xu did indeed sit the FMA CBE on 03 August 2019. All students sitting ACCA's CBE exams are provided with information sheets that state that the possession, and or use, of any type of device capable of taking photographs during an exam is prohibited. The Committee noted that Mr Xu had not, at any stage, sought to challenge this evidence. In all the circumstances, the Committee was satisfied, on the balance of probabilities, that Particulars 1(a) and (b) were proved.

Particulars 1(c)(i) & (ii)

24. The Committee then considered whether such behavior was dishonest. During an exam, Mr Xu had taken at least one photograph of an exam question, he had then posted the photograph on an online web chat group, and assistance may have been provided. The Committee was persuaded that his motive for such behavior was to cheat in the exam and thereby gain an unfair advantage over those students acting honestly. The Committee noted that within the Examination Regulations there was a rebuttable presumption that, if a student has with him an unauthorised item during an exam, his intention was to gain an unfair advantage and it is for the student to rebut that presumption. Mr Xu had not, at any stage, sought to rebut that presumption. The Committee could not envisage any circumstances where cheating, or attempting to cheat, in an exam could be anything other than dishonest. It is done in order to gain an unfair advantage over other students and to assist the participant to pass the exam in circumstances where they might otherwise fail or get a lower mark. The Committee therefore found Allegation 1(c)(i) proved.
25. Having found Mr Xu's conduct to have been dishonest, the Committee also found that he had breached the Fundamental Principle of Integrity because cheating in an exam is neither straightforward nor honest. The Committee thus found Particular 1(c)(ii) proved.

Particulars 1(d)(i) & (ii)

26. Having found the facts proved in Allegations 1(a) and (b), the Committee then considered whether they amounted to misconduct. The Committee was in no doubt that cheating in an exam would clearly be considered deplorable by fellow members of the profession and the public. It was behavior which brought discredit upon Mr Xu, the profession and ACCA, and amounted to misconduct. The Committee therefore found Particular 1(d)(i) proved.
27. Having found the behavior amounted to misconduct, it was not necessary to also consider whether Mr Xu was liable to disciplinary action, which was alleged in the alternative. The Committee thus found Particular 1(d)(ii) not proved.

Particulars 2(a) & (b)

28. The Committee was advised by the Legal Adviser that the duty to co-operate with an ACCA investigation is absolute, that is to say every relevant person is under a duty to co-operate with any Investigating Officer and any Assessor in relation to the consideration and investigation of any complaint. A failure, or partial failure, to co-operate fully with the consideration or investigation of a complaint shall constitute a breach of the regulations and may render the relevant person liable to disciplinary action. The Committee was satisfied that Mr Xu had failed to respond to any of the correspondence sent to him by the Investigating Officer on the three dates specified in Allegation 2(a). The Committee noted that the correspondence was sent by email to the email address provided by Mr Xu when registering with ACCA. The Committee, therefore, found Particular 2(a)(i) to (iii) proved.

29. Having found the facts proved in Allegation 2(a), the Committee then considered whether they amounted to misconduct. The Committee was of the view that failing to co-operate at all with the investigation being carried out by his Regulator into his alleged misconduct, is a serious matter. A student member should not be able to frustrate, delay, or derail completely an investigation into their conduct. Being a student member of ACCA brings with it a duty to co-operate, both in relation to compliance with the Regulations and into the investigation of a complaint. The Committee was satisfied that such behavior represented a serious falling short of professional standards and brought discredit upon Mr Xu and also upon the profession and ACCA as Regulator. It therefore decided that Mr Xu's behavior in failing to co-operate amounted to misconduct and that Particular 2(b)(i) was proved.

30. Having found misconduct proved, it was not necessary for the Committee to consider whether Mr Xu was also liable to disciplinary action, since this was alleged in the alternative. The Committee thus found Particular 2(b)(ii) not proved.

SANCTION AND REASONS

31. In reaching its decision on sanction, the Committee took into account the submissions made by Mr Law. Mr Xu had neither attended nor had he provided any personal mitigation for the Committee to take into account. The Committee referred to the

Guidance for Disciplinary Sanctions issued by ACCA, and had in mind the fact that the purpose of sanctions was not to punish Mr Xu, but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct, and that any sanction must be proportionate. The Committee accepted the advice of the Legal Adviser.

32. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.
33. The Committee considered the following aggravating features: undermining the integrity of ACCA's examination process; involving others in his dishonest conduct; conduct motivated by personal gain; complete absence of insight and/or remorse; repeated failure to engage with his Regulator.
34. The Committee considered the only mitigating factor to be a lack of any previous disciplinary history with ACCA, in the limited time he had been a student member.
35. The Committee considered all the options available, from the least serious upwards. It also took account of Mr Zu's interests, in so far as they were known. It noted that the Association provides specific guidance on the approach to be taken in cases of dishonesty. In Part E2 of the guidance, it states that dishonesty is said to be regarded as a particularly serious matter, even when it does not result in direct harm and/or loss, or is related to matters outside the professional sphere, because it undermines trust and confidence in the profession. The guidance states that the courts have consistently supported the approach to exclude members from their professions where there has been a lack of probity and honesty and that, only in exceptional circumstances, should a finding of dishonesty result in a sanction other than striking off. The guidance also states that 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."

36. The Committee bore in mind these factors when considering whether there was anything remarkable or exceptional in Mr Xu's case that warranted anything other than removal from the student register. The Committee was of the view that there were no exceptional circumstances that would allow it to consider a lesser sanction and concluded that the only appropriate and proportionate sanction was removal from the student register. Cheating in an accountancy exam in order to gain an unfair advantage and a qualification upon which the public will rely is very serious, and fundamentally incompatible with being a student of ACCA. Mr Xu had not demonstrated any remorse or insight into his offending behavior and had chosen not to engage with his Regulator when caught cheating.
37. The Committee also considered that a failure to remove a student from the register who had cheated in this way would seriously undermine public confidence in the profession and in ACCA as its Regulator. Honesty and integrity go to the heart of the profession and, in order to maintain public confidence and uphold proper standards, it was necessary to send out a clear message that this sort of behavior would not be tolerated. Mr Xu's behavior was compounded by his failure to co-operate with ACCA's investigation and, whilst such a failure to co-operate might not, on its own, warrant exclusion from membership of ACCA, when considered in conjunction with the dishonest behavior found proved in this case, exclusion was inevitable.
38. The Committee therefore ordered that Mr Xu be removed from the student register.
39. The Committee also ordered that any future application for membership of ACCA be referred to the Admissions and Licensing Committee.

COSTS AND REASONS

40. ACCA applied for costs in the sum of £5,680. The Committee was provided with a schedule of costs. The Committee was satisfied that the costs claimed were appropriate and reasonable. Mr Xu did not provide any details of his means or provide any representations about the costs requested by ACCA, there was therefore no evidential basis upon which the Committee could make any reduction on that ground.

41. In light of its observations above, the Committee decided to make an order in the full sum requested, namely £5,680.

EFFECTIVE DATE OF ORDER

42. In light of its decision that Mr Xu's behavior was so serious he ought to be removed from the student register, the Committee decided that it was in the public interest that the order have immediate effect.

Mr James Kellock
Chair
26 May 2020