

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Weiyi Wu

Heard on: Wednesday, 05 November 2020

Location: Remotely by Skype for Business via ACCA's Offices, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU

Committee: Ms Carolyn Tetlow (Chair)
Mr Ryan Moore (Accountant)
Ms Helen Kitchen (Lay)

Legal Adviser: Miss Juliet Gibbon

**Persons present
and capacity:** Mr Ben Jowett (ACCA Case Presenter)
Ms Anna Packowska (Hearings Officer)

Outcome: Allegations 1a, 1b, 1c i and 1d i (Misconduct) proved;
Removed from the Student Register & Disqualified from
the Performance Management Exam on 04 September
2019;
Order to pay a contribution to ACCA's costs in the sum of
£4,000

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PRELIMINARY

1. The Disciplinary Committee (“the Committee”) convened to hear allegations of misconduct against Miss Weiyi Wu. The hearing was conducted remotely through Skype for Business in order to comply with the current COVID 19 Regulations. The Committee had a bundle of papers numbered pages 1-66, two additional bundles, numbered 1-8 and 1-6 and a service bundle, numbered pages 1-13.
2. Mr Ben Jowett represented ACCA. Miss Wu did not attend the hearing and was not represented.

SERVICE

3. Written notice of the hearing was sent by electronic mail (“email”) only to Miss Wu’s registered email address on 07 October 2020. The Committee had sight of the delivery notification stating that the email had been received on 07 October 2020. By virtue of Regulation 22(8)(b) of the Chartered Certified Accountants’ Complaints and Disciplinary Regulations 2014, as amended (“the CDR”) the notice would have been deemed served on the same day. ACCA has, therefore, given the requisite 28 days’ notice required under Regulation 10(1)(a) of the CDR.
4. The Committee was satisfied that the email attaching the notice of hearing had been sent to Miss Wu’s registered email address and had been delivered successfully. The notice of hearing, to which Miss Wu had access, contained all the requisite information about the hearing in accordance with Regulation 10 of the CDR.
5. The Committee accepted the advice of the Legal Adviser. It was satisfied that service had been effected in accordance with Regulations 10 and 22 of the CDR.

APPLICATION TO PROCEED IN ABSENCE

6. Mr Jowett made an application to proceed in the absence of Miss Wu.
7. The Investigations Officer first wrote to Miss Wu by email on 14 January 2020 to inform her of the allegations and requested that she provide her response by 04 February 2020. Miss Wu, however, failed to respond.
8. The Investigations Officer attempted to call Miss Wu on 06 and 07 April 2020 but without success.
9. The Investigations Officer wrote to Miss Wu again by email on 27 April 2020 attaching a copy of a report of the disciplinary allegations but received no response. The Investigations Officer corresponded with Miss Wu again by email on 29 June 2020, attaching the Assessor's decision, but he received no response.
10. A further email was sent to Miss Wu by the Case Progression Officer on 16 July 2020 informing her that a disciplinary hearing was to be scheduled and that a Hearings Officer would contact her with details of the hearing.
11. The Committee noted that the Hearings Officer had also written to Miss Wu by email on 07 October 2020 asking her to contact her as a matter of urgency via her registered email address. The email had been sent to an email address that Miss Wu had used to contact the ACCA Students' office on 01 January 2020. There had been no response from Miss Wu. Miss Wu had written to ACCA Students on 01 January 2020 from an email address that was different from her registered address. ACCA Students had replied to Miss Wu requesting customer verification as the email was not linked to her account. There were no further corresponding notes on either the suspect account or Miss Wu's registered account. ACCA Students confirmed that Miss Wu's details had last been updated on 19 August 2018.
12. The Case Progression Officer also wrote to Miss Wu again by email to her registered address on 07 October 2020 to inform her of the date of the

disciplinary hearing. This message was also copied to the non-verified email address that ACCA had for Miss Wu. The Committee has seen confirmation that this email was opened, but there was no response from Miss Wu.

13. The Committee has also seen an email sent to Miss Wu by the Hearings Officer on 30 October 2020 asking if she would be attending the hearing. It also noted that the Hearings Officer had attempted to telephone Miss Wu on 07, 08 and 13 October, and 05 November 2020, but without success.
14. The Committee considered whether it should proceed in Miss Wu's absence. It accepted the advice of the Legal Adviser. The Committee bore in mind that whilst it had a discretion to conduct a hearing in the absence of the relevant person, it should exercise that discretion with the utmost care and caution. The Committee paid due regard to the factors set out in the cases of *Hayward & Others [2001] 3 WLR 125* and *R v Jones [2002] UKHL 5* and to the case of *The General Medical Council v Adeogba and Visvardis [2016] EWCA Civ 162*.
15. The Committee noted that on 07 October 2020 the Case Progression Officer had sent an email to Miss Wu at her registered email address but had also copied in the non-verified email address known to have been used by Miss Wu when corresponding with ACCA Students in January 2020. That email had been opened and, in the Committee's view, Miss Wu was, therefore, likely to have been aware of the date of the disciplinary hearing.
16. The Committee was mindful that there is a public interest in dealing with regulatory matters expeditiously. It noted that Miss Wu had not engaged at all with ACCA's investigation and that ACCA had made repeated attempts to contact her. Given her non-engagement, the Committee was of the view that there was no evidence before it to suggest that an adjournment of today's hearing would result in Miss Wu's attendance on a future date.
17. Having balanced the public interest with Miss Wu's own interests, the Committee determined that it was fair, reasonable and in the public interest to proceed in the absence of Miss Wu.

ALLEGATIONS

Allegation 1

- a. During a PM – Performance Management examination on 04 September 2019, Miss Wu was in possession of unauthorised materials in the form of notes whilst at her exam desk, contrary to Examination Regulations 4 and/or 5.
- b. Miss Wu intended to use the notes referred to at 1a above to gain an unfair advantage.
- c. Miss Wu’s conduct in respect of 1b above was:
 - i. Dishonest, in that Miss Wu intended to use the unauthorised materials which she had at her exam desk to gain an unfair advantage.
 - ii. In the alternative, contrary to the Fundamental Principle of Integrity (as applicable in 2019) in that such conduct was not straightforward and honest.
- d. By reason of her conduct Miss Wu is:
 - i. Guilty of misconduct pursuant to byelaw 8(a)(i), in respect of any or all of the matters set out at 1a to 1c above; or
 - ii. Liable to disciplinary action pursuant to byelaw 8(a)(iii), in respect of 1a above.

BACKGROUND

18. Miss Wu first registered as a student with ACCA on 03 June 2019. This was her first attempt at the Performance Management (“PM”) exam. She had previously passed the corporate law examination.

19. Miss Wu attended the C706/1 Ningbo centre on 04 September 2019 in order to sit the PM exam. This commenced at 9.00am and was due to last for three hours.
20. All candidates for ACCA exams are made aware of the Examination Regulations as follows:
 - a. Prior to an examination, all candidates receive an attendance docket which contains the ACCA guidelines and the Examination Regulations.
 - b. Before an exam commences, the Supervisor's, announcements draw candidates' attention to the regulations and guidelines outlined in the attendance docket.
21. Supervisor A states in the SCRS 1B form he completed on the day of the exam that the unauthorised materials were found in Miss Wu's possession at '10.21AM'. Supervisor A states that the unauthorised materials consisted of '*small note pages with little tiny words*'. When asked whether the unauthorised materials were believed to have been used, Supervisor A stated 'YES'. Supervisor A, when asked how he was alerted to the student with the unauthorised materials, stated '*I took away the note (Invigilator A gave it to me)*'. Miss Wu's behaviour is described by Supervisor A in the form where it is stated that she '*collected all notes and had put them into the pocket when I arrived*'. Supervisor A gave the following account of the incident: '*At around 10:21, Invigilator B reported to me that she found candidate on seat #47 referred to notes which the candidate secretly brought into the exam room. I arrived the desk and invigilator A gave me one note. Actually, invigilator B found the candidate brought in several notes, but she quickly put others into her pocket, so we collected only one*'.
22. The exam centre Invigilator, Invigilator A, stated in the SCRS 1B form he completed on the day of the exam that the unauthorised materials were found in Miss Wu's possession at '10:22AM'. Invigilator A stated that the unauthorised materials consisted of '*several pieces of paper notes in the size of about 3cm*

x 4xm'. Invigilator A stated that the unauthorised materials were found by 'Invigilator B'. When asked whether the unauthorised materials were believed to have been used, Invigilator A responded, '*when I came to her desk, Invigilator B already found she has the notes for the exam*'. When asked how they were first alerted to the student with the unauthorised materials, Invigilator A stated '*she appeared mindful of the invigilator's where about in the exam room*'. Invigilator A stated '*she was grasping the paper notes in her hand and tried not to be taken away*'. Invigilator A's full account of the incident is as follows: '*At about 10:22 AM when Invigilator motioned me over to cdd's desk, I could see the candidate was protecting a few notes from being taken away from one of her hand by Invigilator B. Invigilator B went out of the room to report to the Supervisor about the case, and that's when I saw another piece of small notes covered under her arm but still had edges exposed outside. I have forcefully taken it from under her arm although she began to hold it tight with her arm*'.

23. Invigilator B also completed an SCRS 1B on the day of the exam. She stated that the unauthorised materials were found in Miss Wu's possession at '*10:21 AM*'. Invigilator B stated that the unauthorised materials were found '*under the scrap paper*'. When asked whether the unauthorised materials were believed to have been used, Invigilator B stated '*Yes. Some of these notes are put under the scrap paper and some in her hand. When I found it, she was looking at one of these*'. Invigilator B stated that she was alerted to Miss Wu having unauthorised materials because '*She was always trying to look up and find the location of the invigilator*'. She described that Miss Wu '*grasped all the notes in her palm and refused to show them to the invigilator and the other invigilator only got one piece under her arm*'. Invigilator B's full account of the incident was as follows: '*At around 10:20 AM, I found this candidate looking up frequently. I tried to figure out what happened. So I approached her desk from back and at the moment I saw a corner of a note under her scrap paper. I tried to find out what's under the scrap paper. The candidate immediately grasped all the notes (definitely more than 3) under her scrap paper and claimed they are just scrap paper and refused to let me have a look. I asked the other invigilators to come to her desk and I went to the S's office to report*'.

24. Miss Wu completed a SCRS 2B form on the day of the exam. She stated in the form that she had read the Examination Regulations on the back of the attendance docket. She further stated that the unauthorised materials consisted of *'my notes summarized to improve my learning'*. When asked whether she was in possession of the unauthorised materials whilst the exam was in progress Miss Wu stated *'No. I always make notes and print out to improve my remember. When the exam began, I open my calculator. Found the note still in there, so I put it on the desk and didn't look at it until the teacher pass through and asked why the notes is here'*. When asked to confirm if she accepted that the unauthorised materials were relevant to the syllabus being examined, Miss Wu stated *'It was my notes summarized to improve my learning, but I put it in my calculator and forgot to put it out until exam began'*. When asked to confirm why she had the unauthorised materials, Miss Wu stated *'It was totally my careless and forgotten to put it out before the exam'*. Miss Wu was asked whether she had used the unauthorised materials and she stated *'I found the notes than put it on the desk, didn't realise the things is very serious. And then the teacher found that and thought I deliberately took it in'*. She further stated *'And the teacher could confirm that I didn't look at it just put it on my desk'*. When asked whether she had intended to use the unauthorised materials she stated *'No. I didn't look at it. You have my words'*. When asked whether she had intended to gain an unfair advantage at the exam Miss Wu stated *'No. It is obvious that I have no intend to do that'*. When asked whether she agreed with the account she had been given, Miss Wu asserted *'No. Because at first I didn't realise how serious it was. So just keep the note on the desk until teacher told me it wasn't show at there'*.
25. In the Examiner's Irregular Script Report dated 30 September 2019, the Examiner stated that the notes were relevant to the syllabus but not the exam. The Examiner stated *'Very hard to read the notes as the scan is too small, but from what I can see they wouldn't have helped'*.
26. The Investigations Officer and the Hearings Officer have both written to and attempted to telephone Miss Wu on a number of occasions, as set out above, but she has not responded to any of their communications.

SUBMISSIONS

27. Mr Jowett submitted that the following Examination Regulations were relevant in this case:
- a. Regulation 4, that provides *'You are not allowed to take to your exam desk any books, notes or other materials ... These are known as 'unauthorised materials'.*
 - b. Regulation 5, that provides *'You are not allowed to possess, use, or intend/attempt to use, any unauthorised materials whilst the exam is in progress (whether at your desk or otherwise).'*
 - c. Regulation 7(a), that provides *'If you breach exam Regulation 4 and/or 5 and the 'unauthorised materials' are relevant to the syllabus being examined, it will be assumed that you intended to use them to gain an unfair advantage in the exam. In any subsequent disciplinary proceedings, you will have to prove that you did not intend to use the unauthorised materials to gain an unfair advantage in the exam'.*
28. Mr Jowett submitted the following:
- a. Miss Wu is a registered student with ACCA and is, therefore, bound by the byelaws and regulations.
 - b. Miss Wu accepted in the SCRS 2B form, completed by her on the day of the exam, that she was in possession of unauthorised materials in the form of written notes on the small piece of paper confiscated by Invigilator A.
 - c. Miss Wu had confirmed that she had read the Examination Regulations and, therefore, would have been aware that she should not have had the unauthorised materials with her at her desk during the exam.

- d. The written notes were relevant to the syllabus being examined.
- e. The written note confiscated by the Invigilator was very small and appeared to be designed to be concealed.
- f. Miss Wu had not informed the Invigilator that she had revision notes in her possession.
- g. As the unauthorised materials were relevant to the syllabus, the reverse burden under Examination Regulation 7(a) applied and the Committee should assume that Miss Wu intended to use the unauthorised materials to gain an unfair advantage in the exam, unless she has proved otherwise.
- h. Miss Wu had not discharged that burden.

29. Mr Jowett further submitted that:

- a. Miss Wu's conduct was plainly dishonest in accordance with the test set out in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67*.
- b. Miss Wu's actions in attempting to gain an unfair advantage in the exam undermined the examination process and ACCA's reputation as a provider of examinations.
- c. Miss Wu's dishonest conduct fell far short of the conduct expected of professional accountants and those training to become accountants and that misconduct, as defined by byelaw 8(c) and the case of *Roylance v GMC (No 2) [2000] 1 AC 311*, was clearly made out.

DECISION AND REASONS

30. The Committee carefully considered the documentary evidence before it and the oral submissions made by Mr Jowett. The Committee accepted the advice of the Legal Adviser.
31. The Committee bore in mind that the burden of proving a factual allegation in dispute rests on ACCA and the standard of proof is the balance of probabilities. In this case, however, the burden would be reversed under Examination Regulation 7(a) in relation to Allegation 1b if the Committee was satisfied that Miss Wu had been in possession of unauthorised materials during the exam that were relevant to the syllabus for the PM exam.

ALLEGATION 1(a) - PROVED

32. The Committee was satisfied on the evidence of the SCRS 2B form completed by Miss Wu that she accepted that she had taken unauthorised materials to her exam desk in the form of revision notes, albeit she stated this was by accident. The Committee also accepted the evidence of the Supervisor and the two Invigilators, as stated in their SCRS 1B forms, that confirmed this. Miss Wu was, therefore, in breach of Examination Regulation 4.

ALLEGATION 1(b) - PROVED

33. The Committee was satisfied, on the evidence of the Examiner, as stated in the Examiner's Irregular Script Report, that the written notes were relevant to the syllabus for the PM exam that Miss Wu was sitting on 04 September 2019.
34. In the circumstances, the reverse burden under Examination Regulation 7(a) applied and it was for Miss Wu to prove that she had not intended to use the notes to gain an unfair advantage in the exam.
35. The Committee carefully considered Miss Wu's explanation for having the notes in her possession, as stated by her on the SCRS2B form. She stated that she had forgotten to remove a piece of paper containing revision notes from

her calculator before entering the exam room and when she had realised that she had the notes in her possession, she had put them on her exam desk. The Committee noted that the note with the revision notes on it was very small (described as being '3cm x 4cm') and was, therefore, easy to conceal. Miss Wu had not brought the fact she had 'accidentally' taken unauthorised materials to her desk to the attention of the Invigilators when they found the note. The Committee was satisfied that Miss Wu was aware of the Examination Regulations, as she had stated on the SCRS 2B that she had read them on the back of the attendance docket. Miss Wu would, therefore, have known that she was not permitted to take revision notes to her desk.

36. The evidence of the Invigilators was that Miss Wu, in fact, had looked at the notes and then attempted to conceal them. She had also refused to hand them over to the Invigilators. Further, she had put other notes of a similar size into her pocket in order to conceal them.
37. Having considered all the evidence before it, the Committee did not find Miss Wu's account that she had innocently taken the revision notes into the exam to be plausible. It determined that she had not proved, on the balance of probabilities, that she had not intended to use the unauthorised materials to gain an unfair advantage in the exam. Accordingly, the Committee found 1a proved.

ALLEGATION 1(c)(i)- PROVED

38. The Committee went on to consider whether Miss Wu's conduct had been dishonest. It was satisfied that this was premeditated conduct on the part of Miss Wu. She had deliberately taken written notes into an exam with the intention of using them in the exam to gain an unfair advantage in the exam. Applying the standards of ordinary decent people, it was also satisfied that Miss Wu's conduct in so doing was, on the balance of probabilities, dishonest. Accordingly, the Committee found Allegation 1(c)(i) proved and did not, therefore, go on to consider the alternative charge set out in Allegation 1(c)(ii).

ALLEGATION 1(d)(i)- MISCONDUCT FOUND

39. The Committee determined that Miss Wu's premeditated and dishonest conduct, in attempting to 'cheat' in an ACCA professional exam, in order to gain an unfair advantage in the exam, fell far below the standards expected of an ACCA student. In the Committee's determination Miss Wu's dishonest conduct undermined the integrity of ACCA's exam process and had brought discredit to her, the Association and the accountancy profession. The Committee was satisfied that Miss Wu's dishonest conduct clearly amounted to misconduct. The Committee, having found Allegation 1(d)(i) proved, did not go on to consider the alternative charge set out in Allegation 1(d)(ii).

SANCTION AND REASONS

40. Mr Jowett informed the Committee that there were no previous disciplinary findings against Miss Wu although she had, of course, only been a registered student of ACCA for a period of three months.
41. The Committee accepted the advice of the Legal Adviser who referred it to Regulation 13(4) of the CDR and to ACCA's Guidance for Disciplinary Sanctions. In considering what sanction, if any, to impose the Committee bore in mind the principle of proportionality and the need to balance the public interest against Miss Wu's own interests. The purpose of any sanction was not meant to be punitive but was to protect members of the public, maintain public confidence in the profession and ACCA and to declare and uphold proper standards of conduct and behaviour.
42. When considering the appropriate sanction, the Committee considered the aggravating and mitigating features of the case. The Committee considered the following to be mitigating features:
- a. Miss Wu had admitted to having unauthorised materials at her desk on the day of the exam.

- b. Miss Wu had no previous disciplinary findings against her although the Committee noted that she had only been a registered student since 03 June 2019.

- 43. The Committee considered the following to be aggravating features:
 - a. This was deliberate and premeditated dishonest conduct on the part of Miss Wu in order to gain an unfair advantage in an ACCA professional examination.

 - b. Miss Wu had attempted to conceal the unauthorised materials when confronted by the Invigilators and had refused to hand over other paper notes that she had concealed in her pocket.

 - c. Miss Wu's misconduct undermined the integrity of the ACCA examination process and had the potential to damage the reputation of the ACCA qualification.

 - d. Miss Wu had not engaged with the ACCA investigation or the proceedings and so there was no evidence of any insight or remorse on her part.

- 44. The Committee considered each available sanction in ascending order of seriousness, having concluded that taking no further action was not appropriate due to the seriousness of the dishonest conduct. 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.

- 45. 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 as set out in the Sanctions Guidance. The Committee considered

that most of the factors applicable to a severe reprimand were not applicable in this case. The Committee concluded that a severe reprimand would not be appropriate or sufficient to protect the public interest.

46. The Committee had regard to paragraph E2.2 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”.

47. The Committee was mindful that the sanction of removal from the student register was the most serious sanction that could be imposed. The Committee took into account the guidance that this sanction was likely to be appropriate when the behaviour of the student was fundamentally incompatible with being a registered student of ACCA. The Committee was satisfied that Miss Wu’s dishonest conduct in attempting to cheat in a professional exam had reached that high threshold. The Committee had heard no mitigation from Miss Wu to warrant anything other than removal from the student register.

48. For the above reasons, the Committee concluded that the appropriate and proportionate sanction was removal from the student register.

49. The Committee did not deem it necessary to impose a minimum period before which Miss Wu cannot reapply for admission as a student member.

DECISION ON COSTS AND REASONS

50. The Committee was provided with two costs schedules. ACCA applied for costs in the sum of £5,515 but Mr Jowett informed the Committee that there may be an error in the amount claimed for the costs of the investigation and the amount claimed could, therefore, be reduced by the Committee. He also invited the

Committee to consider whether there should be a further reduction as the hearing would not take the six hours claimed.

51. The Committee was satisfied that the costs claimed by ACCA in the sum of £5,515 was appropriate and reasonable but that there should be some reduction. The Committee noted that Miss Wu had not provided any details of her current financial means or provided the Committee with any written representations in relation to the costs claimed by ACCA.
52. Although the Committee did not have any financial information from Miss Wu, it took into account that she was a young student in the People's Republic of China. The Committee also considered that there should be a reduction in the costs claimed for the investigation and the hearing. The Committee determined that in all the circumstances it would be fair and proportionate to order Miss Wu to pay a contribution to ACCA's costs in the sum of £4,000.

ORDER

53.
 - i. Miss Weiyi Wu shall be removed from ACCA's student register.
 - ii. Miss Weiyi Wu shall be disqualified from the Performance Management examination that she sat on 04 September 2019.
 - iii. Miss Weiyi Wu shall pay a contribution to ACCA's costs in the sum of £4,000.

EFFECTIVE DATE OF ORDER

54. The Committee determined that the order shall take effect from the date of the expiry of the appeal period referred to in the Appeal Regulations.

Mrs Carolyn Tetlow
Chair
05 November 2020