

APPLICATION ON PAPERS

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Miss Pan Yijin
Heard on:	Wednesday, 11 November 2020
Location:	Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street London WC2N 6AU
Committee:	Mr James Kellock (Chair) Mr Martin Davis (Accountant) Mrs Suzanne McCarthy (Lay)
Legal Adviser:	Miss Judith Chrystie (Legal Adviser)
Persons present and capacity:	Mr Phillip Law (ACCA Case Presenter) Mr Jonathan Lionel (Hearings Officer)
Observers:	Mr Antony Townsend (Appointments Board)
Summary	Removed from the student register Any future application to be referred to the Admissions and Licensing Committee Unable to apply for readmission for two years
Costs:	£5,500

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SERVICE OF PAPERS

1. Miss Pan Yijin was neither present nor represented.
2. The Committee considered its service bundle (numbered pages 1-16)
3. The Committee was satisfied there had been effective service of the notice of the hearing ('the Notice') in accordance with Regulation 10(1) of the Complaints and Disciplinary Regulations 2014 (as amended on 01 January 2020) ('the Regulations'). The Notice had been served by email on 14 October 2020, which was 28 clear days before the hearing.
4. In reaching its decision, the Committee recognised that the email had been sent at 18:15. It considered the provisions of Regulation 22(8)(b), which stated that where a notice had been sent by email it would be deemed served on the day it was sent. The Regulations did not specify a time by which an email had to be sent; there was no cut off point stated in the Regulations following which an email would be deemed served the following day. Therefore, the Committee was content that there had been good service and determined that the requirements of Regulation 10(1) of the Regulations had been met.

PROCEEDING IN ABSENCE

5. The Committee carefully considered whether to proceed in Miss Pan Yijin's absence. It recognised that it had discretion to do so under Regulation 10(7) of the Regulations but should only do so with the utmost care and caution.
6. The Committee determined that there was no purpose in delaying consideration of the issues. There was nothing to indicate that Miss Pan Yijin would attend the hearing at a future date if the hearing was to be adjourned. The Committee considered that the evidence demonstrated that Miss Pan Yijin did not intend to engage with ACCA's proceedings and did not wish to attend the hearing. She had not made any effort to communicate with ACCA and had not made an application for an adjournment.

7. Further, the Committee recognised that there was a public interest in regulatory proceedings being dealt with expeditiously. The issues under consideration were alleged to have occurred over a year ago. The Committee considered that it was important that these matters were dealt with promptly.
8. The Committee was satisfied that Miss Pan Yijin had voluntarily waived her right to attend and that, in all the circumstances, it was reasonable and fair to proceed in her absence.

APPLICATION TO AMEND

9. ACCA made an application to amend:
 - a. Allegation 1(a) by removing an erroneous comma before the word 'student', and
 - b. Allegation 2(a) to remove superfluous wording (namely the phrase 'at all'), replace the word 'to' with the word 'or' so that the particular read, '*... Miss Pan Yijin has failed to cooperate fully with the investigation of a complaint in that she failed to respond to any or all of ACCA's correspondence dated...*'.
10. The Committee determined to exercise its discretion under Regulation 10(5) of the Regulations to allow the amendments. It was satisfied that Miss Pan Yijin was not prejudiced in the conduct of her defence by such minor changes. The amendments did not impact on the nature of the case or the meaning of the allegation being considered by the Committee.

ALLEGATION

11. The Committee considered the following allegation (as amended).

Allegation 1

- a. On an unknown date or dates between 21 August 2019 and 19 September 2019, ACCA student Miss Pan Yijin was concerned in an offer to sell ACCA F1, F2, F3 and F4 CBE questions on the Taobao web site.
- b. Miss Pan Yijin's conduct in respect of the matters set out at 1(a) was dishonest, in that her actions were designed to provide other exam entrants with an unfair advantage in an ACCA exam.
- c. By reason of any or all of her conduct at 1(a) and/or 1(b), Miss Pan Yijin is guilty of misconduct pursuant to byelaw 8(a)(i).

Allegation 2

- a. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Miss Pan Yijin has failed to cooperate fully with the investigation of a complaint in that she failed to respond to any or all of ACCA's correspondence dated:
 - i. 25 October 2019;
 - ii. 28 November 2019; and
 - iii. 13 December 2019;
 - b. By reason of her conduct in respect of any or all of the matters set out at 2(a), Miss Pan Yijin is:
 - i. Guilty of misconduct, pursuant to byelaw 8(a)(i); or alternatively
 - ii. Liable to disciplinary action pursuant to byelaw 8(a)(iii)
12. In considering the allegation, the Committee considered a bundle with pages numbered 1-52. In addition, it received a Powerpoint slide pack containing the submissions made on behalf of ACCA.

BRIEF BACKGROUND

13. Miss Pan registered as a student with ACCA on 26 January 2019.
14. On 19 September 2019, ACCA discovered that questions from ACCA's F1, F2, F3 and F4 computer based exams (CBE) question bank were being offered for sale on the Chinese website, Taobao. Taobao is a consumer marketplace site, similar to Amazon.
15. After ACCA had captured the offer through a screen capture, Taobao removed the page.
16. The screen capture was said to show that photographs had been taken at the FFA – Financial Accounting (F3) exam sat on 21 August 2019 at the Nanjing Institute of Technology. The candidate sitting the exam got 76%.
17. ACCA's exam records showed that the only student to achieve 76% at this sitting of the F3 exam was Miss Pan Yijin.
18. In a witness statement dated 12 October 2020, ACCA's CBE Delivery Manager stated:

Students... do not have authority to sell, supply or publish exam questions. I can confirm that sight of the questions set in live CBE exams is likely to give a student an unfair advantage because there is a possibility that the question or minor variation of it will appear during the exam again.

19. In a witness statement dated 04 October 2019, ACCA's Senior CBE Administrator stated that students were usually issued with an information sheet at the time of booking a CBE on-demand exam. The information sheet included ACCA's Exam Regulations, which prohibited the following:
 - a. The use of mobile phone, electronic communication device, camera or any item with smart technology functionality in the exam room (Regulation 6);

- b. Assisting, or attempting to assist, any other person before, during or after an exam (Regulation 9);
 - c. Copying exam questions and removing them from the exam room.
20. ACCA wrote to Miss Pan Yijin at her registered e-mail address on 25 October 2019 to seek her comments on the issues being investigated. Chasing letters were sent on 28 November 2019 and 13 December 2019. ACCA submitted that Miss Pan Yijin had not responded to any letter nor had she communicated with ACCA at any point.

DECISION ON FACTS/ALLEGATION AND REASONS

21. The Committee was satisfied that Allegation 1(a) was proved. The Committee recognised that the burden of proof rested with ACCA. The Committee considered that someone had to have photographed the exam questions and considered that it was more likely than not that that individual had to be Miss Pan Yijin. The questions offered for sale came from a CBE where only one student had achieved the pass mark stated in the advertisement, namely Miss Pan Yijin. The Committee regarded it as a logical step to conclude that it was more likely than not that she must have, therefore, facilitated the offer to sell and that Miss Pan Yijin was directly or indirectly involved in the offer to sell questions that had formed part of the test she had sat on 21 August 2019.
22. The Committee considered Allegation 1(b). It was satisfied that Miss Pan Yijin's conduct was dishonest. In reaching its decision it considered the following test:
- a. Ascertain the actual state of the Miss Pan Yijin's knowledge or belief as to the facts,
 - b. Determine whether her conduct was honest or dishonest by the standards of ordinary people.
23. In establishing Miss Pan Yijin's knowledge or belief as to the facts, the Committee had regard to the Exam Regulations, which were sent to her in advance of the sitting in August 2019. The Committee considered that, having received the Exam Regulations, Miss Pan Yijin would have known that she was

prohibited from taking photographs and assisting other students. Moreover, the fact that the name of the student taking the exam was deliberately obliterated from the photograph on the website indicated an awareness that sharing exam questions was not permitted and that the act of selling exam questions was designed to provide other exam entrants with an unfair advantage in an ACCA exam.

24. Having determined Miss Pan Yijin's knowledge and belief as to the facts, the Committee considered whether Miss Pan Yijin's conduct would be regarded as dishonest by the standards of the ordinary person. It was in no doubt that being involved in the sale of exam questions, which would allow another student to gain an unfair advantage - in effect, to cheat - would be regarded as dishonest behaviour. Allegation 1(b) was accordingly proved.
25. The Committee considered whether the factual allegations that had been found proved amounted to misconduct. It regarded the selling on of questions, the consequential breaches of the Examination Regulations and the related dishonesty as a clear falling short of the standards expected of an individual attempting to become an accountant. Conspiring with others to cheat in a professional examination was deplorable and entirely unacceptable conduct and the Committee judged that this conduct amounted to misconduct. The Committee, therefore, found Allegation 1(c) proved.
26. The Committee found Allegation 2(a) proved. There was no evidence that Miss Pan Yijin had responded to any of the three letters sent to her by ACCA, or that she had cooperated in anyway with the investigation process, as she was obligated to do under the Regulations.
27. The Committee judged that Allegation 2(a) also amounted to misconduct. Whilst the Committee considered that not every failure to communicate would necessarily amount to misconduct, it regarded Miss Pan Yijin's behaviour in ignoring three letters of substantial importance from her regulator as a significant failing. ACCA's regulation of the profession is dependent on cooperation from those who voluntarily agree to be subject to, and to comply with, its bye-laws and regulations. Given the nature of the letters Miss Pan Yijin

ignored, her failure to cooperate was not only a breach of those regulations and her professional obligations, it was also an act that fell so short of the conduct expected from her, that it brought discredit to the student herself and to the ACCA and its ability to regulate.

SANCTIONS AND REASONS

28. The Committee had regard to the Guidance for Disciplinary Sanctions ('the Guidance').
29. The Committee considered that there was little mitigation in the case: Miss Pan Yijin's had no previous disciplinary history but the period that she had been registered as a student prior to the events leading to the findings of misconduct was extremely brief.
30. The Committee considered that there were several aggravating circumstances in the case: the dishonesty was serious, planned and involved a systematic attempt to undermine the integrity of the exam process. This was not a case involving a student who was attempting to cheat her own way through a professional test but a deliberate attempt to assist others to gain an advantage through cheating.
31. Cheating in a professional exam could detrimentally impact on the public's perception in the integrity and credibility of ACCA's exams and brought discredit on ACCA and its standards for the profession. It also created risk to the public: cheating in a professional exam might mean the individual was not ready or otherwise able to pass. The Committee considered that this misconduct went to the heart of the profession as, if there was not a proper process of education and training, the public could not be assured of the qualifications of ACCA's members.
32. Miss Pan Yijin's dishonesty was exacerbated by her failure to engage and cooperate with her regulator. This lack of engagement also meant that the Committee had no information into her insight or understanding of the

consequences of her misconduct, nor whether she was remorseful or apologetic.

33. Given these circumstances, the Committee determined that it would be entirely insufficient in the public interest to conclude this matter without an order or by imposing only an admonishment or a reprimand. Miss Pan Yijin's conduct was entirely unbecoming of an individual attempting to become an accountant and a member of a professional body. The Committee considered that an admonishment or a reprimand would not reflect the seriousness of the deliberate and planned conduct and dishonest intention behind it, nor would any of the other specific sanctions relating to students be sufficient.
34. The Committee recognised that dishonesty was often regarded as being incompatible with remaining on a professional register, other than in exceptional circumstances. Further, in not engaging with the disciplinary investigation and proceedings nor attending the hearing, the Committee had no understanding whether Miss Pam Yijin was remorseful, had any insight into the serious nature of the issues or had endeavoured to remediate and take action to correct her misconduct. Her lack of cooperation meant that the Committee had no evidence on which it could be reassured it was unlikely that there would be no repetition of the misconduct, or that Miss Pan Yijin had the character to justify the trust and confidence members of the public needed to have in a student accountant. Consequently, the Committee considered that it would be insufficient in the public interest to conclude the case with a severe reprimand.
35. The Committee determined that an order removing Miss Pan Yijin's name from the register was the only appropriate and reasonable order in the circumstances of the case. Further, it considered that it was proportionate to extend the period of time before an application for readmission could be made to two years and to combine this with an order that any future application for membership of ACCA should be referred to the Admissions and Licensing Committee.
36. The Committee regarded these further steps as necessary to reflect the serious nature of the dishonest conduct and the disregard for the regulatory process

that had followed. These were matters of fitness and propriety that should be considered by an Admissions and Licensing Committee should Miss Pan Yijin gain readmission to the student register and successfully proceed towards ACCA membership.

COSTS AND REASONS

37. ACCA claimed costs in the sum of £6,124.50.
38. The Committee recognised that under Regulation 15(1) of the Regulations, it could direct Miss Pan Yijin to pay such sum by way of costs to ACCA as it considered appropriate. The Committee was mindful that other ACCA members should not be penalised by having to fund the costs of a hearing necessitated by Miss Pan Yijin's dishonest and unprofessional misconduct.
39. The Committee considered the schedule of costs provided by ACCA. It was satisfied that the sum claimed had been reasonably incurred but considered that a reduction in the amount claimed should be made to reflect the fact that some costs were not clearly itemised and, moreover, the hearing had been concluded in a shorter period than the time estimated for some of the costs claimed. It considered that a reasonable claim for costs amounted to £5,500.00.
40. Given her lack of cooperation with the investigation and disciplinary proceedings, Miss Pan Yijin did not provide a statement of financial position setting out her income, expenditure and her assets, nor did she advance any argument that she was unable to pay the costs claimed.
41. Recognising that Miss Pan Yijin had not provided any evidence or argued that she could not pay the sums claimed by ACCA, the Committee had no basis on which to make any further reduction of the costs claimed. It ordered that Miss Pan Yijin pay costs to ACCA in the sum of £5,500.00.

EFFECTIVE DATE OF ORDER

42. The Committee considered that it was in the interests of the public for the order to have immediate effect. In the Committee's view, not making the order immediate would have a detrimental effect on public confidence, as it would allow Miss Pan Yijin to remain registered as a student notwithstanding the serious misconduct the Committee had found.

**Mr James Kellock
Chair
11 November 2020**