

## HEARING

### DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

#### REASONS FOR DECISION

<b>In the matter of:</b>	<b>Miss Xue Chen</b>
<b>Heard on:</b>	<b>Monday, 30 November 2020</b>
<b>Location:</b>	<b>Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU</b>
<b>Committee:</b>	<b>Mrs Kathryn Douglas (Chair) Mr Trevor Faulkner (Accountant) Mrs Diane Meikle (Lay)</b>
<b>Legal Adviser:</b>	<b>Mr Robin Havard (Legal Adviser)</b>
<b>Persons present and capacity:</b>	<b>Ms Michelle Terry (ACCA Case Presenter) Ms Geraldine Murray (Hearings Officer) Ms Anita Phillips (Hearings Officer)</b>
<b>Summary</b>	<b>Removed from the student register</b>
<b>Costs:</b>	<b>£5,500</b>

#### ACCA



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## **PRELIMINARY APPLICATIONS**

### **SERVICE OF PAPERS**

1. The Committee had considered the following documents: a hearing bundle (pages 1 to 49) and a service bundle (pages 1 to 24).
2. The Committee had read the letter dated 02 November 2020 sent by ACCA by email to Miss Chen and had noted the subsequent emails sent to Miss Chen with the necessary link and password to enable Miss Chen to gain access to documents relating to this hearing. The Committee was satisfied that such emails had been sent to her registered email address in accordance with Regulation 22 of the Complaints and Disciplinary Regulations 2014 as amended ("CDR"). The Committee had noted that the emails had been delivered successfully.
3. The emails and the documents to which Miss Chen had access also contained the necessary information in accordance with CDR10. Consequently, the Committee decided that Miss Chen had been properly served with notice of proceedings.

### **PROCEEDING IN ABSENCE**

4. On 16 November 2020, in the absence of any response from Miss Chen to the email of 02 November 2020, ACCA sent another email to her at the same email address asking her to respond and reminding her of the date of the hearing. The email had been delivered successfully. However, Miss Chen did not reply.
5. On 23 November 2020, ACCA sent a further email to Miss Chen which included the link to join the hearing via Skype. Again, the email had been delivered successfully but Miss Chen did not reply.
6. On 25 November 2020, a Hearings Officer of ACCA attempted to phone Miss Chen on the number registered with ACCA to speak to her about the forthcoming hearing. The call was made at 7.30 a.m. GMT to allow for the time

difference between the U.K. and China. However, having rung for two minutes, the call was disconnected and there was no facility enabling the officer to leave a message. On the same day, the Officer sent an email to Miss Chen informing her of the attempt to contact her, reminding Miss Chen of the hearing date and asking whether it was her intention to attend.

7. On 26 November 2020, the Officer tried again to call Miss Chen but with the same result as on the day before. The Officer sent another email to Miss Chen on the same day, asking Miss Chen once more if she intended to attend the hearing or, if she was unable to attend, whether she was content for the hearing to proceed in her absence. The email was successfully delivered but Miss Chen did not respond.
8. The Committee was satisfied that ACCA had done everything possible to engage Miss Chen in the proceedings but she clearly had no intention of doing so. The Committee noted that the emails had been sent to the same email address used by Miss Chen when she wrote to ACCA on 05 January 2020 and on two occasions on 13 January 2020.
9. The Committee found, on the balance of probabilities, that Miss Chen had received the emails from ACCA informing her of the hearing and giving her access to the documents containing the evidence on which ACCA relied in support of the allegations. The Committee concluded that Miss Chen had voluntarily absented herself from the hearing which she could have joined by telephone or video link if it was not possible for her to attend in person. She had, therefore, waived her right to attend.
10. The Committee was also satisfied that, taking account of the seriousness of the allegations, it was in the public interest to proceed. The Committee did not consider that any benefit would be derived in adjourning the hearing and no such application had been made. Finally, the Committee considered that it was in a position to reach proper findings of fact on the written evidence presented to it by ACCA, to include the written responses provided by Miss Chen immediately after the examination and in her emails of 05 and 13 January 2020.

11. The Committee ordered that the hearing should proceed in the absence of Miss Chen.

### **AMENDMENT TO ALLEGATION**

12. The Case Presenter stated that the first line of Allegation 1(c), which currently only refers to Allegation 1(a), should instead refer to Allegation 1(b) and that this was an oversight. The application was simply to amend the allegation by making reference to Allegation 1(b) as opposed to 1(a). The amendment would not cause any prejudice to Miss Chen in that the facts of particular 1(c)(i) regarding the allegation of dishonesty make direct reference to the nature of the allegation described at Allegation 1(b).
13. Having taken advice, and exercising its discretion under CDR10(5), the Committee was satisfied that it was appropriate to grant the amendment. Miss Chen knew the case she had to meet from the facts as alleged in Allegation 1(c)(i). She had provided written responses to the central issues to be considered by the Committee regarding her conduct at the exam, and that, had she attended the hearing, she would not have been prejudiced in the conduct of her defence.

### **ALLEGATIONS/BRIEF BACKGROUND**

#### **Allegation 1 as amended**

- a) During an Audit and Assurance ("AA") examination on 02 December 2019, Miss Xue Chen was in possession of unauthorised materials, in the form of a book containing material relevant to the syllabus being examined, contrary to Examination Regulation 4.
- b) Miss Xue Chen intended to use the unauthorised materials set out at 1(a) above to gain an unfair advantage
- c) Miss Xue Chen's conduct in respect of 1(b) above was:

- i. Dishonest, in that Miss Xue Chen intended to use the unauthorized materials to gain an unfair advantage; or in the alternative
  - ii. 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 Xue Chen is:
  - i. Guilty of misconduct pursuant to byelaw 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 byelaw 8(a)(iii), in respect of 1(a) above.

## **DECISION ON FACTS/ALLEGATIONS AND REASONS**

### **Allegation 1(a)**

14. In reaching its findings in respect of this allegation, the Committee relied upon the written evidence provided by the Invigilator who found unauthorised materials in Miss Chen's possession when sitting the examination and the Script Examiner. The Committee had also taken into account the explanation provided by Miss Chen as contained in the report she completed at the time of the exam.
15. On 05 June 2018, Miss Xue Chen ("Miss Chen") first registered as an ACCA student.
16. On 02 December 2019, Miss Chen attended the C827/2 centre in order to sit the AA examination. The exam commenced at 13:30pm.
17. The exam centre Invigilator states in the SCRS 1B form completed on the day of the exam that Miss Chen was in possession of unauthorised material in the

form of a little palm-sized book containing 20 pages with some hand-written notes on them. The Invigilator said:

*"The exam started at 13:30. Ten minutes later, when collected the paper desk signs, and went to the student Chen Xue, 4339949, I found Chen Xue was looking at the notes that she took with. At that moment, Chen Xue tried to put the notes under the keyboard. The notes were confiscated and the student didn't say anything but continued her exam."*

18. On the day of the examination, Miss Chen stated on an SCRS 2B form that she had unauthorised materials in her possession and that it was, *"a printed little book"*. She also accepts that the content of the material was relevant to the exam.
19. This was consistent with the Examiner's irregular script report, which confirmed that the material was relevant to the syllabus and relevant to the examination, although the notes had not been used because Miss Chen only had the notes for the first 10 minutes of the exam and would only really help with knowledge-based questions. The Examiner stated that there was only one knowledge-based question, but the candidate had not attempted that question.
20. Consequently, the Committee was satisfied that, on the account of the Invigilator and, indeed, on her own account, Miss Chen was in possession of unauthorised materials during an Audit and Assurance examination on 02 December 2019.
21. Therefore, the Committee found the facts of Allegation 1(a) proved.

### **Allegation 1(b)**

22. All candidates for ACCA examinations are made aware of the Examination Regulations as follows:
  - Prior to an examination, all candidates receive an attendance docket which, on the reverse side, contains the ACCA guidelines and

Regulations;

- Before an examination commences, the Supervisor's announcements draw candidates' attention to the regulations and guidelines outlined in the enclosures sent with the attendance docket. In particular, point 6 is a clear instruction to candidates to remove all unauthorised materials from their desks.
23. The Committee noted that Miss Chen accepted in her SCRS 1B form that she had read the reverse of her examination attendance docket and the Examination Regulations. Furthermore, she accepted that she had put the material under her keyboard. This was seen by the Invigilator and the Committee found, on the balance of probabilities, that this was clearly an attempt on the part of Miss Chen to conceal the unauthorised material.
  24. In her form SCRS 1B, Miss Chen stated that, "*I attempt to use but invigilator stopped me timely and I have never used it*" and that she had taken the material into the exam by mistake.
  25. In answer to subsequent questions, Miss Chen stated that she did not want to use the unauthorised material and that she did not intend to gain an unfair advantage.
  26. On 05 January 2020, ACCA's Exams Conduct department wrote to Miss Chen regarding the incident in the exam, inviting her to provide an explanation.
  27. In emails to ACCA dated 05 and 13 January 2020, Miss Chen stated that she forgot to take her "*small papers*" out of her pocket before starting the exam. When she realised she had the notes during the exam, she was afraid that the Invigilator would find the "*little book in her pocket so made the wrong decision to put it under her keyboard.*" When she was putting it under the keyboard, the Invigilator saw her movement and accused her of cheating, but she maintained that she never intended to cheat or obtain any unfair advantage.

28. Having found that Miss Chen was in possession of unauthorised materials during the exam, the burden of proving that she did not breach Regulation 4 to gain an unfair advantage in the exam rested with Miss Chen.
29. The Committee had considered carefully the explanation put forward by Miss Chen and did not find her account plausible or in any way convincing.
30. Miss Chen knew that the document contained information which was directly relevant to the exam. The information was contained in a palm-sized booklet and she had also written notes on the pages of the booklet.
31. As stated in her explanation contained in her email of 05 January 2020, Miss Chen said:

*"When the examination started, I suddenly found this little papers in my pocket. I was afraid that the invigilator would find the little book in my pocket so I made a wrong decision: I want to put it under my keyboard to avoid the invigilator found the little papers which I forgot to take it out before the exam and thought I was cheating."*

32. The Committee took the view that it was not plausible that it was only after the examination started that Miss Chen "suddenly" found the little book in her pocket. Even if that were so, there was no satisfactory explanation why Miss Chen would then take the little book out of her pocket and, when observing the approach of the Invigilator, she would look to hide the material under her keyboard.
33. In all the circumstances, the Committee was not satisfied that Miss Chen had proved, on the balance of probabilities, that she had not been in possession of unauthorised material in order to gain an unfair advantage in the exam. On the contrary, the Committee had found, on the balance of probabilities, that Miss Chen had taken the unauthorised material into the exam with the intention of using it in order to gain an unfair advantage
34. On this basis, the Committee found the facts of Allegation 1(b) proved.



#### **Allegation 1(c)(i)**

35. The Committee relied upon its findings of fact under Allegations 1(a) and (b) above.
36. The Committee was satisfied that Miss Chen knew that she was not entitled to take into an exam unauthorised materials with the intention of using such material to gain an unfair advantage. Indeed, it was clear that Miss Chen knew that to do so would be wrong and knew that it could amount to cheating. As stated above, the Committee had found, on the balance of probabilities, that Miss Chen had taken the unauthorised material into the exam with the intention of using it in order to gain an unfair advantage.
37. The Committee was also satisfied that, by the standards of ordinary decent people, such conduct would be considered to be dishonest.
38. Consequently, the Committee found Allegation 1(c)(i) proved.

#### **Allegation 1(c)(ii)**

39. On the basis that this allegation was pleaded in the alternative to Allegation 1(c)(i), the Committee made no finding in respect of it.

#### **Allegation 1(d)(i)**

40. Taking account of its findings that Miss Chen had acted dishonestly, the Committee was satisfied that Miss Chen was guilty of misconduct in that such conduct could properly be described as deplorable. In the Committee's judgement, it brought discredit to Miss Chen, the Association and the accountancy profession. Honesty is at the heart of the profession.

#### **Allegation 1(d)(ii)**

41. On the basis that this allegation was pleaded in the alternative to Allegation 1(d)(i), the Committee made no finding in respect of it.

## **SANCTION AND REASONS**

42. The Committee considered what sanction, if any, to impose, taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions and the principle of proportionality. It had also listened to legal advice from the Legal Adviser which it accepted.
43. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no order.
44. The Committee was mindful of the fact that its role was not to be punitive and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in ACCA, and to declare and uphold proper standards of conduct and performance.
45. The Committee considered whether any mitigating or aggravating factors featured in this case.
46. The Committee accepted that there were no previous findings against Miss Chen.
47. However, this was the extent of any material available to the Committee by way of mitigation, save that the allegations related to an isolated incident. The Committee had no information regarding the personal circumstances of Miss Chen, nor had it been provided with any testimonials or references as to Miss Chen's character.
48. As for aggravating features, on the basis of the findings, it had been established that Miss Chen's behaviour had been dishonest. The steps Miss Chen would have had to take involved a level of planning and premeditation. The Committee was satisfied that her behaviour would undermine the reputation of ACCA and the profession.

49. The Committee concluded that neither an admonishment nor a reprimand would adequately reflect the seriousness of the Committee's findings.
50. The Committee then considered whether a severe reprimand would be an appropriate sanction. Again, taking account of the seriousness of its findings, the Committee did not consider that a severe reprimand would be sufficient or proportionate.
51. Miss Chen had been found to have acted dishonestly in her conduct and that, based on its findings, the objective of her dishonest conduct was to gain an unfair advantage over students who had approached their exams in an honest way. Therefore, she may have passed the examination when she was not competent to do so and this could have led to her achieving a level of success to which she was not entitled and which was not merited. In this way, she could present a risk to the public. It was conduct which was fundamentally incompatible with being a student member of ACCA.
52. Taking account of the finding of dishonest conduct, the Committee had considered whether there were any reasons which were so exceptional or remarkable that it would not be necessary to remove Miss Chen from the student register but could find none.
53. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Miss Chen shall be removed from the student register.

#### **COSTS AND REASONS**

54. The Committee had been provided with a bundle relating to ACCA's claim for costs (pages 1 to 4).
55. The Committee concluded that ACCA was entitled to be awarded costs against Miss Chen, all allegations, including dishonesty, having been found proved. The amount of costs for which ACCA applied was £5,969. Having examined the breakdown, the Committee did not consider that the claim was

unreasonable but the hearing had taken less time than estimated. Therefore, the Committee reduced the amount claimed to £5,500.

56. Miss Chen had not provided ACCA with any details of her means. In the correspondence sent to her, Miss Chen would have been warned at the outset of the importance of providing details of her means. In the absence of any information, the Committee had approached the issue of costs on the basis that Miss Chen was able to pay any amount awarded.
57. In all the circumstances, and in exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £5,500.

#### **EFFECTIVE DATE OF ORDER**

58. The Committee decided that this order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

**Mrs Kathryn Douglas**  
**Chair**  
**30 November 2020**