

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Miss Lanyan Fang
Heard on:	Wednesday, 09 September 2020
Location:	Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
Committee:	Ms Ilana Tessler (Chair) Mr Peter Brown (Accountant) Ms Sue Heads (Lay)
Legal Adviser:	Mr David Marshall (Legal Adviser)
Persons present and capacity:	Mr Phillip Law (ACCA Case Presenter) Ms Nkechi Onwuachi (Hearings Officer)
Observers:	None
Summary	Removed from the student register
Costs:	Miss Fang to pay costs of £5000 to ACCA

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

1. The Committee heard an allegation of misconduct against Miss Fang, a student of ACCA, in relation to an examination. Mr Law appeared for ACCA. Miss Fang was not present and not represented.

PRELIMINARY APPLICATIONS/SERVICE OF PAPERS

2. The Committee was satisfied that Miss Fang had been served with the documents required by Regulation 10(7) of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 in accordance with Regulation 22. The required documents were contained in the papers before the Committee. There was evidence that they were sent by email on 05 August 2020 to an email address notified by Miss Fang to ACCA as an address for correspondence.

PROCEEDING IN ABSENCE

3. Miss Fang was not present when the hearing started shortly after the scheduled time of 09:00 BST. Mr Law, therefore, made submissions in support of an application to proceed in her absence.
4. The Committee noted that until recently the hearing had been scheduled to start at 10:00 BST and that was the time stated in the notice of hearing. Miss Fang is in Beijing, where the time is currently 7 hours ahead of the UK. To make the hearing more convenient for Miss Fang ACCA had changed the start time to 0900 BST. This change was notified to Miss Fang by email on 07 September (two days ago) but since nothing had been heard from Miss Fang since that time the Committee could not be confident that she was aware of the change. The Committee, therefore, adjourned its decision on the application to proceed in absence until 10:00 BST. Miss Fang did not attend at that time either and the Committee announced its decision.
5. The Committee saw correspondence from Miss Fang up to 07 August 2020 which showed that she was aware of the proceedings and was engaging with them. She had asked for an interpreter to assist her. However, she then indicated that she would like to 'withdraw' her student registration and 'drop the

hearing' because she could not afford to pay costs if the decision went against her. She was told by ACCA that she could not withdraw and that the hearing would go ahead in any event. Following that, she sent an email dated 07 August 2020 in which she said 'OK, I will attend the hearing' [by video or audio]. The Committee did not see any further communication from her and was told that there had been none despite several attempts to communicate with her, including this morning.

6. Miss Fang clearly knew about this hearing. The Committee took into account her recent expressed reluctance to attend and the fact that she has not responded to email and telephone messages since 07 August. It concluded that Miss Fang had decided not to exercise her right to be present and that she would be unlikely to attend on a future occasion if the hearing were adjourned. The Committee considered that the public interest required the hearing to take place and that it would be fair to proceed in Miss Fang's absence. The Committee would take into account Miss Fang's written submissions.
7. The Committee determined to proceed in Miss Fang's absence.

ALLEGATION(S)/BRIEF BACKGROUND

8. ACCA's case is that during an ACCA examination the Invigilator found unauthorised notes in Miss Fang's possession at the examination desk. She faced the following Allegation:

Allegation 1

- (a) During a TX UK examination on 03 September 2019, Miss Lanyan Fang was in possession of:
 - (i) Unauthorised materials in the form of handwritten notes whilst at her exam desk, contrary to Examination Regulations 4 and/or 5.
- (b) Miss Lanyan Fang intended to use any or all of the unauthorised materials set out at 1(a) above to gain an unfair advantage.

- (c) Miss Lanyan Fang's conduct in respect of 1(b) above was:
- (i) Dishonest, in that Miss Lanyan Fang intended to use any or all of the unauthorised materials which she had at her exam desk to gain an unfair advantage; in the alternative
 - (ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2019);
- (d) By reason of her conduct, Miss Lanyan Fang 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/ALLEGATION(S) AND REASONS

9. On 22 May 2020, Miss Fang returned a completed Case Management Form. In response to the question 'Do you admit any of the facts of these allegations?' she ticked 'yes' and said, '*I admit that I took the unauthorised materials and intended to use them*'. She also admitted that she was guilty of misconduct.
10. Before that time Miss Fang's position had been equally clear but quite different. She had never denied having unauthorised materials with her at the exam desk but consistently stated that it was by mistake and that she did not intend to cheat. She gave an explanation of how she came to have the notes at her desk.
11. The Legal Adviser advised that under Regulation 12(3) of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 the Committee was required to consider any written response to the allegations and determine whether it established the relevant person's wish to make any admissions. The Committee could accept the admissions in full. If the Committee was in doubt about whether the formal admissions correctly represented Miss Fang's position it would be entitled not to accept them, or to accept them only in part.

12. The Committee took into account that concepts such as intent and dishonesty are not necessarily easy even for a native English speaker. Miss Fang was operating in a foreign language, apparently without any assistance. Judged by her written communications her knowledge of English appeared to be limited. The apparently clear admissions in the Case Management Form were inconsistent with her position as she had expressed it in correspondence.
13. The Committee determined that from the moment of their discovery, Miss Fang had accepted that she was in possession of unauthorised materials at her examination desk. It, therefore, accepted her formal admission to this. It found Allegation 1(a)(i) proved.
14. The Committee was in doubt about whether Miss Fang had made a fully informed decision to make admissions that were likely to lead to a finding of deliberate dishonesty. The Committee, therefore, treated the remaining allegations as not admitted.
15. With regard to intention, Miss Fang's account (given in at least three separate documents) was that the notes were made to help her remember things relevant to this exam. She said that she was used to keeping these notes in her pocket and on the day of the exam she forgot to put them in her bag, which would have been left outside the examination room. She said that her actions were not deliberate but careless.
16. The Invigilator said that the notes were found on the desk under the pile of scrap paper provided by the Invigilator. Miss Fang did not dispute that it was the Invigilator who had found the notes and she did not dispute his account. The Committee concluded that she must have transferred the notes from her pocket to the desk and hidden them under the scrap paper. That must have been a deliberate act enabling her to cheat. In a later statement to ACCA she said, *'honestly I thought of using it, but ACCA's supervision is very strict'*. She said (and this was confirmed by a report) that she had not used the notes, but she also said that she did not have a chance to use them as the notes were confiscated early on, as she started the third question.
17. The Committee also took into account the Case Management Form which appeared to indicate that Miss Fang admitted intending to use the notes.

18. Under the Exam Regulations, Regulation 7(a), where a candidate is in possession of unauthorised materials and the unauthorised materials are relevant to the syllabus being examined, it will be assumed that the candidate intended to use them to gain an unfair advantage in the exam unless he or she proves the contrary.
19. If it was still Miss Fang's case that she did not intend to use the notes to gain an unfair advantage, the Committee did not accept what she said. Even without the presumption, the Committee would have concluded on the balance of probabilities that Miss Fang intended to use the notes to cheat. The Committee found Allegation 1(b) proved.
20. Having found that Miss Fang had notes at her examination desk with the intention to use them to gain an unfair advantage, the Committee had no hesitation in finding that her conduct was dishonest. Cheating, or preparing to cheat, in an examination is clearly dishonest. The Committee found Allegation 1(c)(i) proved. Allegation 1(c)(ii) was in the alternative and did not require a finding, although clearly her conduct was not straightforward or honest.
21. The Committee considered that Miss Fang's conduct clearly amounted to misconduct. Cheating (or preparing to cheat) in professional examinations is one of the most obvious examples of misconduct that a student can commit. The Committee found Allegation 1(d)(i) proved. Allegation 1(d)(ii) was in the alternative and did not require a finding.

SANCTION(S) AND REASONS

22. Having found that Miss Fang had notes at her examination desk with the intention to use them to gain an unfair advantage, the Committee considered what sanction, if any, to impose.
23. The Committee first sought to identify any mitigating or aggravating factors.
24. As to mitigation, Miss Fang made an immediate admission that she was in possession of unauthorised materials and she cooperated fully with the investigation. She made admissions, and the Committee gave her credit for the admissions in her Case Management Form even though it decided that it was unsafe to rely on them alone. Miss Fang had no previous findings against her,

but she had only been a registered student since 2017.

25. Exam cheating is clearly a very serious matter, but the Committee did not consider that there were any factors that made this case significantly worse than other cases of its kind. It, therefore, found no particular aggravating factors.
26. In view of the seriousness of the misconduct the Committee was satisfied that it was necessary to impose a sanction. It considered the relevant sanctions in ascending order, having regard to ACCA's sanctions guidance.
27. The Guidance states that admonishment and reprimand are appropriate where *'the conduct is of a minor nature'*. The dishonesty in this case was far too serious to be dealt with by these sanctions.
28. The Guidance states that the sanction of severe reprimand *'would usually be applied in situations where the conduct is of a serious nature but there are particular circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public, and there is evidence of the individual's understanding and appreciation of the conduct found proved'*. The key factors set out in the Guidance were not present in this case. The misconduct was deliberate. If Miss Fang had succeeded in cheating it would have been for personal gain. Exam cheating causes harm by undermining the credibility of the examination system and the respect due to ACCA qualifications. Miss Fang's insight, if any, was limited.
29. Miss Fang provided no references and little information about her past, current or future circumstances. There was little significant mitigation. The Committee concluded that her cheating was so serious that the sanction of severe reprimand would not be adequate.
30. The Committee next considered the sanction of removal from the student register. It concluded that Miss Fang's behaviour was fundamentally incompatible with being a student of ACCA. The purpose of registering as a student is to learn the skills of an accountant and demonstrate such knowledge and skills in fair examinations. That in turn is the basis on which a professional accountant is entitled to command respect from the public. Deliberate cheating

undermines this. It is one of the most serious types of misconduct that is open to an accountancy student to commit. The Committee was satisfied that removal from the student register was the minimum sanction it could impose.

31. The Committee considered whether it was necessary to make an order extending the period before Miss Fang could apply to be readmitted. Given that she is at a very early stage in her career, it decided that it was not necessary to do so.

COSTS AND REASONS

32. Mr Law applied for costs totalling £5,996.
33. The Committee was satisfied that these proceedings were properly brought and that ACCA was entitled in principle to a contribution to its costs. With regard to the amount, Mr Law explained that the estimate was based on 5 hours of hearing time whereas this hearing would be completed in significantly less time. The Committee considered that the costs should be reduced accordingly. In other respects, they were reasonable.
34. Miss Fang provided information about her means. She said that she was supported by her parents who met her monthly living expenses of about £200 per month. They were farmers who had recently been badly affected by flooding. She said, *'I admit that I should be responsible for the money, but could you give me a little discount or extend the duration of the charge in my case?'*
35. The Committee accepted that a reduction should be made on account of Miss Fang's limited means. It recognised that almost any costs order would be a significant burden on Miss Fang but it also had to take into account that honest students and members suffered a burden, through their subscription fees. Taking a broad-brush approach, the Committee assessed the contribution to be paid at £5,000.

ORDER

36. The Committee ordered as follows:
 - (a) Miss Fang shall be removed from the student register

(b) Miss Fang shall make a contribution to ACCA's costs of £5,000

EFFECTIVE DATE OF ORDER

37. This order shall take effect from the date of the expiry of the appeal period referred to in the Appeal Regulations.

Mrs Ilana Tessler
Chair
09 September 2020