

## HEARING

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

#### REASONS FOR DECISION

<b>In the matter of:</b>	<b>Miss Qiqi Gao</b>
<b>Heard on:</b>	<b>Wednesday, 14 April 2021</b>
<b>Location:</b>	<b>Hearing conducted remotely due to COVID-19 pandemic</b>
<b>Committee:</b>	<b>Mr Maurice Cohen (Chair), Mr George Wood (Accountant) Mr Andrew Skelton (Lay Member)</b>
<b>Legal Adviser:</b>	<b>Mr Richard Ferry-Swainson</b>
<b>Persons present and capacity:</b>	<b>Mr Benjamin Jowett (ACCA Case Presenter) Ms Anna Packowska (Hearings Officer)</b>
<b>Summary:</b>	<b>Facts and misconduct found proved. Removed from student register with immediate effect.</b>
<b>Costs:</b>	<b>£5000.00</b>

#### ACCA



+44 (0)20 7059 5000



info@accaglobal.com



[www.accaglobal.com](http://www.accaglobal.com)



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

## **INTRODUCTION/SERVICE OF PAPERS**

1. The Disciplinary Committee (“the Committee”) convened to consider an Allegation against Miss Gao, who did not attend and was not represented.
2. The papers before the Committee were in a bundle numbered 1 to 62, plus an additional bundle numbered 1 to 8, a simple costs schedule numbered 1 to 3 and a detailed costs schedule consisting of two pages. There was a service bundle numbered 1 to 18.
3. Mr Jowett made an application to proceed in the absence of Miss Gao.

## **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 Jowett 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 17 March 2021, thereby satisfying the 28-day notice requirement, and sent by email to Miss Gao at her email address as it appears in the ACCA register. The Hearings Officer provided a statement confirming she had sent the email and although there was no automatic delivery receipt generated, due to a system error, she said the email had not been returned as undelivered. The Notice included details about the time, date and venue for the hearing and also Miss Gao’s right to attend the hearing, in person or on the phone, and to be represented, if she so wished. In addition, the Notice provided details about applying for an adjournment and the Committee’s power to proceed in Miss Gao’s absence, if considered appropriate.
6. The Committee was satisfied that the Notice had been served in accordance with the Regulations. Having so determined, the Committee then considered whether to proceed in Miss Gao’s absence. The Committee bore in mind that

although it had a discretion to proceed in the absence of Miss Gao, it should exercise that discretion with the utmost care and caution, particularly as Miss Gao was unrepresented.

7. An ACCA Hearings Officer sent further emails to Miss Gao on 13 April 2021 asking her whether she would be attending the hearing. No response was received. The same day the Hearings Officer tried telephoning Miss Gao on a number of occasions, without success. There had thus been numerous attempts to contact Miss Gao, including sending emails to both her registered email address and the alternative email address that she had used in correspondence with ACCA.
8. The Committee noted that Miss Gao faced serious allegations, including 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 Miss Gao, who was no longer engaging with ACCA, would attend on any other occasion. The Committee noted that the last response received from Miss Gao during the investigation was an email dated 17 December 2019. There had been no contact since, and she had not responded to any of the correspondence sent by ACCA about this hearing. The Committee therefore concluded that Ms Gao had thereby waived her 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 Miss Gao.

#### **ALLEGATIONS/BRIEF BACKGROUND**

10. It is alleged that Miss Gao is liable to disciplinary action on the basis of the following Allegations:

## **Allegation 1**

ACCA student Miss Gao Qiqi / 高绮岐:

1. Between 12 July 2019 and 30 August 2019, Miss Gao caused to be published and offered to sell ACCA F2 exam questions on an online market website.
  2. Miss Gao's conduct in respect of the matters set out at 1 above was:
    - 2.1 Dishonest in that she offered to provide assistance to another or other exam entrants to gain an unfair advantage in ACCA's F2 exam referred to in Allegation1 above in return for payment; or in the alternative
    - 2.2 Contrary to the fundamental principle of integrity in that such conduct is not straight forward and honest
  3. By reason of her conduct in respect of 1 and 2.1 or 2.2 above, Miss Gao is guilty of misconduct pursuant to bye-law 8(a)(i)
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11. Miss Gao registered as an ACCA student on 17 May 2018. Her ACCA ID is 4325949.
  12. ACCA's Computer Based Examination ("CBE") Delivery team received a referral from the British Council office in China. The British Council raised concerns about the integrity of ACCA's CBE exams after they found F2 CBE questions offered for sale on Taobao, a China based consumer to consumer marketplace website.
  13. Accordingly, the matter was referred to ACCA Investigations.

14. The page referred to above was reported to www.taobao.com by ACCA and has since been removed. However, ACCA CBE Delivery Team took a screen capture of the page before it was removed.
15. Although the student details were not on the screen capture, Mr Kieran Docherty of ACCA's CBE Delivery Team was able to identify the student.
16. In his referral form Mr Docherty explained:
  - The Provisional Results Notification for ACCA Computer Based Examination images were reviewed. There was enough of the image which showed that this related to the FMA – Management Accounting CBE held at Bjunzh ZBG on 12 July 2019.
  - This information, as reviewed against ACCA records, showed that only one student sat the FMA – Management Accounting at this Bjunzh ZBG CBE centre on 12 July 2019. It was student ID: 4325949, Miss Gao, who achieved a pass mark of 53.
17. ACCA Investigations Officer wrote to Miss Gao at her registered email address on 06 November 2019 to seek her comments in relation to the investigation.
18. Miss Gao responded on 07 December 2019, stating the following:

*“On 29 June 2019, I applied for the ACCA subject test organised by your company through the ZBG ACCA Zhuhai Computer Test Center. On the 12th of July of the same year, I went to the examination room designated by your company at the Zhuhai Computer Test Center to take the exam, and I passed it.*

*I obtained the former ACCA exam questions on a proper and public occasion, and the questions were disclosed by your company in the form of*

*exams during the previous exams. According to the provisions of Chinese laws, these questions are no longer classified as confidential documents.*

*Firstly, the way I obtained the questions from the previous ACCA exams was legal, and there was no secret stealing.*

*On 8 July 2019, in order to familiarise myself with the styles and types of questions in the ACCA examination sponsored by your company, I purchased a set of questions from the previous ACCA exams for practice training through 2.taobao.com on Alibaba. Therefore, in terms of the acquisition method, my acquisition method was legal, and in the form of an open purchase, so there was no secret stealing. I can also provide the legitimate source of the questions. Even if you believe that any party disclosed questions from your past exams through improper means without your permission, you should investigate the relevant legal liability of the disclosing party. The disclosure of the questions had nothing to do with me. I obtained the questions from legitimate sources without any fault.*

*Secondly, according to the provisions of the law of my country, the questions from the previous exams were disclosed by the sponsor in the form of exams and entered the public domain. They are no longer business secrets.*

*It must be emphasised that the incident took place in China, and I am a Chinese citizen. In the absence of a special agreement, Chinese laws shall apply in determining the facts of the case and resolving the relevant disputes. According to the provisions of the law of my country, the questions from the previous exams were disclosed by the sponsor in the form of exams and entered the public domain. (Because of the examinations held by the sponsor, the exam questions were open to a large number of candidates.) They are no longer business secrets. These questions are also used as practice exams by the relevant education and training institutions. Candidates can obtain these questions online and offline through training institutions and bookstores.*

*Thirdly, I obtained the original exam questions for a legitimate purpose rather than malicious plagiarism. In addition, the previous questions are completely different from the questions of the current exam.*

*As mentioned above, the purpose of my purchase of the questions in the previous ACCA exams was just to familiarise myself with the styles and types of questions of the ACCA exam sponsored by your company through practice training. In China, it is a common practice of students and training institutions to familiarise oneself with the style of question of the sponsor. My behaviour was just a normal practice routine for students and training institutions in China, and there is nothing new or unconventional about it. Therefore, in view of the purpose of my purchase of the previous questions, I did not have any malicious plagiarism, and I did this just for study.*

*Finally, after being informed that the questions cannot be made public, I also immediately blocked the relevant information.*

*After I learned of your claim that the questions could not be disclosed, I immediately took remedial measures to block the information, and I did not allow the information to continue to be disclosed or disseminated.*

*I have no obligation to maintain the confidentiality of the questions of your company's previous ACCA exams.*

*On 29 June 2019, I filled in the "Confirmation Form for Payment of Computer-Based Class Test" issued by your company. On this confirmation form, you did not state that candidates should assume the obligation of confidentiality for the questions of the previous ACCA examinations. You only set forth some matters such as preparation for the examination and the rules of the examination room. Objectively speaking, what I have established with your company is a contractual relationship between equal civil subjects. I signed up for the examination organised by your company, paid the fee in accordance with the provisions, and complied with the contract between the parties.*

*Since you did not explicitly inform me that I must undertake the obligation of confidentiality, and I did not sign to confirm it, your unilateral request for me to undertake the obligation of confidentiality not only increased my liabilities and limited my rights but also was obviously unfair to me. Therefore, under the condition that I did not have the obligation of confidentiality, the online disclosure of the ACCA exam questions that I obtained through a proper and public occasion did not infringe the legitimate rights and interests of your company. Even if you need to pursue legal responsibility, the person bearing the obligation of confidentiality to you, instead of me, should be held accountable.*

*To sum up the facts, I believe that my statement regarding the above matters is not an attempt to be evasive or make excuses, and I am certainly not making unreasonable excuses with the fear of taking responsibility. Your company, as an internationally recognised authority of ACCA examination, has always been known for being legal, fair and rigorous. I hope that this matter can be handled objectively, fairly and impartially in accordance with the law, considering that I unwittingly disclosed content for which I did not undertake an obligation of confidentiality. Of course, I will learn from this incident going forward.”*

19. In the response of the Investigation Officer dated 11 December 2019, Miss Gao was reminded of the declaration she signed when she applied to become an ACCA student, namely that she would subject herself to ACCA's bye-laws and regulations.
20. In addition, the Investigations Officer requested Miss Gao to supply the details of the seller she bought the CBE questions from and copies of the questions supplied to her by the seller.
21. Miss Gao responded on 17 December 2019. She supplied the seller's account number, but no name was supplied. Miss Gao was also unable to produce the questions she purchased from the seller as she had removed the images and could not recover them.



22. There was no further correspondence from Miss Gao and she did not attend the hearing. Consequently, there was nothing additional from her that the Committee could consider.

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

23. The Committee considered with care all the evidence presented and the submissions made by Mr Jowett. The Committee accepted the advice of the Legal Adviser. The Committee bore in mind it was for ACCA to prove the facts alleged and to do so on the balance of probabilities. It was not for Miss Gao to disprove them.
24. Notwithstanding Miss Gao's assertion that because the matters complained of occurred in China she is governed by Chinese law, the Committee was satisfied that, as a student member of ACCA, she is governed by ACCA's bye-laws and has an obligation to abide by ACCA's Regulations. Bye-law 7(d) states:

*"The relationship between the association and its members, relevant firms, registered students and all other persons to whom the Charter, bye-laws and applicable regulations apply shall be governed by the law of England and Wales and (subject to bye-law 7(c) above) all disputes shall be subject to the exclusive jurisdiction of the High Court or County Court of England and Wales."*

#### **Allegation 1 - proved**

25. The Committee was satisfied that, on the evidence of the screen capture produced by ACCA, and linked to Miss Gao by her individual identification number, she must have had some involvement with the offer to sell ACCA F2 CBE questions. This would appear to be admitted by Ms Gao, who stated she had herself purchased questions on the internet and she did not consider she had an obligation to keep ACCA CBE questions confidential and could sell them on. Nevertheless, she removed them from sale when it was brought to her attention that the questions could not be made public.

26. The Committee also noted that ACCA Exam Regulation 12 applicable at the time and supplied to Miss Gao when she booked her CBE exam, stated:

*“If you are sitting paper-based examinations, you are not permitted to remove either your candidate answer booklet(s) or your question paper from the exam room. All candidate answer booklets remain the property of ACCA. If you are taking a computer-based exam you are not permitted to remove any working paper issued to you. All exam working paper remains the property of ACCA. You are also not permitted to copy exam questions. Copying questions and removing them from the exam room is prohibited.”*

27. Furthermore, Regulation 9 states:

*“You may not assist, or attempt to assist, any other person before, during and/or after your exams or obtain to attempt to obtain assistance by improper means from any other person before or during your exams.”*

28. In light of the above, the Committee was satisfied that Miss Gao caused to be published and offered to sell ACCA F2 exam questions on an online market website and it therefore found Allegation 1 proved.

**Allegation 2.1 - proved**

29. The Committee then considered whether such behaviour was dishonest. The Committee considered what it was that Miss Gao had done, what her intentions were and whether the ordinary decent person would find that conduct dishonest. Miss Gao had offered for sale recent questions from the ACCA F2 exam that she had recently sat. She provided evidence that she had herself purchased exam questions online to help her study and argued there was no prohibition from such action in China. The Committee has already indicated that is satisfied that Miss Gao is governed by ACCA's bye-laws and Regulations and is therefore prohibited from selling exam questions online, or elsewhere. The only legitimate source of ACCA exam questions is ACCA. The F2 exam is an on-demand exam and questions for current on-demand exams cannot be purchased legitimately.

30. The only possible intention for offering to sell exam questions was to make money from people purchasing them. Purchasers could then use those questions to assist them in passing the exam themselves, thereby gaining an unfair advantage over other candidates who sat the exam legitimately without cheating. Miss Gao must have known this since she had done it herself. Miss Gao claimed she was only doing what others had already done and that there was no confidentiality attaching to the questions under Chinese law. This viewpoint is completely contrary to the clear instructions in Regulation 12 and the Committee was not persuaded that Miss Gao genuinely held this belief. Even if she did, the Committee was satisfied that an ordinary decent member of the public, in full possession of the facts of the case, would find that conduct to be dishonest.
31. The Committee therefore found 2.1 proved.

**Allegation 2.2 - not proved**

32. Having found Allegation 2.1 proved, it was not necessary for the Committee to consider 2.2, which was alleged in the alternative.

**Allegation 3 - proved**

33. Having found the facts proved in Allegation 1, and that Miss Gao's conduct was dishonest, the Committee then considered whether by reason of her conduct she was guilty of misconduct. The Committee considered that the dishonest behaviour of offering to sell CBE questions constituted behaviour Miss Gao must have known was wrong. The sharing of exam questions in such a manner undermines the integrity of the exam in question and more generally ACCA's qualifications, causing potentially considerable reputational harm. A CBE Delivery team Manager confirmed that although ACCA does sell specimen exam papers where students can practise questions, these questions are not from live exams. Sight of live CBE exam papers may give a student an advantage because there is a probability the question will appear during the exam again, thereby undermining the examination process.

34. The Committee considered such behaviour represented a serious falling short of professional standards and that fellow members of the profession, and indeed members of the public, would find such behaviour deplorable. It was behaviour which brought discredit upon Miss Gao, the profession and ACCA and it did amount to misconduct. The Committee therefore found Allegation 3 proved.

### **SANCTION AND REASONS**

35. In reaching its decision on sanction, the Committee took into account the submissions made by Mr Jowett. Miss Gao had not attended or provided any personal mitigation for the Committee to take into account, although the Committee did take into account her previous written submissions. 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 Miss Gao, 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.
36. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.
37. The Committee considered the following aggravating features: undermining the integrity of ACCA's examination process; lack of insight, remorse and remediation; a refusal to accept that she was subject to ACCA's bye-laws and Regulations.
38. The Committee considered the following mitigating factors: no previous disciplinary matters recorded against her, although given her relatively short association with ACCA this did not carry significant weight; advertisement removed when asked by ACCA.
39. The Committee did not think it appropriate to take no further action in a case where it had found misconduct involving dishonest behaviour. The Committee

considered it would not be in the public interest to take no further action in a case where a student member had acted in this way.

40. The Committee next considered an admonishment. However, the Committee considered the dishonest selling of on-demand exam questions to be too serious to be concluded with an admonishment, particularly where the behaviour was deliberate and there was no evidence of insight, remorse or remediation. The Committee therefore decided that an admonishment was not a sufficient sanction in all the circumstances of this case.
41. The Committee then considered whether to reprimand Miss Gao. The guidance indicates that a reprimand would be appropriate in cases where the conduct is of a minor nature, there appears to be no continuing risk to the public and there has been sufficient evidence of an individual's understanding together with genuine insight into the conduct found proved. However, the Committee did not consider Miss Gao's conduct to be of a minor nature and there was no evidence of any insight. Accordingly, the Committee concluded that a reprimand would not adequately reflect the seriousness of the conduct.
42. The Committee then considered whether a severe reprimand would adequately reflect the seriousness of the case. The guidance indicates that such a sanction would usually be applied in situations where the conduct is of a serious nature but where 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 Committee considered none of these criteria to be met. The guidance adds that this sanction may be appropriate where most of the following factors are present:
  - The misconduct was not intentional and no longer continuing;
  - Evidence that the conduct would not have caused direct or indirect harm;
  - Insight into failings;
  - Genuine expression of regret/apologies;
  - Previous good record;

- No repetition of failure/conduct since the matters alleged;
  - Rehabilitative/corrective steps taken to cure the conduct and ensure future errors do not occur;
  - Relevant and appropriate co-operation during the investigation stage.
43. The Committee considered that, apart from a previous good record, none of these factors were present in this case and that a severe reprimand was therefore not a sufficient and proportionate sanction to mark the seriousness of Miss Gao's conduct and to uphold standards and maintain confidence in the profession.
44. Having considered all the options available from the least serious upwards, the Committee concluded that the only appropriate and proportionate sanction was removal from the student register. The Committee 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."*
45. The Committee bore in mind these factors when considering whether there was anything remarkable or exceptional in Miss Gao's case that warranted anything other than exclusion from membership. Miss Gao had not demonstrated any insight or remorse, nor had she cooperated with the hearings process. 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 exclusion. The dishonest marketing for sale on the internet of exam questions from current on-demand ACCA exams was very serious. It potentially enabled other students to gain an unfair advantage and seriously undermined the integrity of the examination process. The Committee considered such behaviour to be fundamentally incompatible with being a student member of ACCA. This dishonest conduct was such a serious breach of bye-law 8 that no other sanction would adequately reflect the gravity of her offending behaviour.

46. The Committee also considered that a failure to exclude a student member from the register who had behaved in this way would seriously undermine public confidence in the profession and in ACCA as its regulator. The public needs to know it can rely on the integrity of ACCA's examination process. In order to maintain public confidence and uphold proper standards in the profession it was necessary to send out a clear message that this sort of behaviour is unacceptable.
47. The Committee therefore ordered that Miss Gao be removed from the student register.

### **COSTS AND REASONS**

48. ACCA applied for costs in the sum of £6,133.50. The Committee was provided with a schedule of costs. The Committee was satisfied that the costs claimed were appropriate and reasonable, except for the time estimates for the Case Presenter and Committee Officer for today's hearing which, in the event, took less than a full day. Miss Gao did not provide any details of her 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.
49. In light of its observations above, the Committee reduced the amount requested to reflect the actual costs more likely to have been incurred and made an order in the sum of £5,000.

## **EFFECTIVE DATE OF ORDER**

50. In light of its decision that Miss Gao's dishonest behaviour warranted removal from the student register, the Committee decided that it was in the public interest that this order take immediate effect.

**Mr Maurice Cohen**  
**Chair**  
**14 April 2021**