

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Jiahao Xie

Heard on: Thursday, 26 August 2021

Location: Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU using Microsoft Teams

Committee: HH Graham White (Chair)
Dr David Horne (Accountant)
Mr Geoffrey Baines (Lay)

Legal Adviser: Mr Iain Ross (Legal Adviser)

Persons present

and capacity: Mr Phillip Law (ACCA Case Presenter)
Ms Nkechi Onwuachi (Hearings Officer)
Mr Yali Quan (Interpreter)

Observers: None

Summary Removed from the student register

Costs: The student member ordered to pay cost to the ACCA in the sum of £1,200.00.

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PRELIMINARY APPLICATIONS/SERVICE OF PAPERS

1. The Committee heard an allegation of misconduct against Mr Jiahao Xie. The hearing was conducted remotely via MS Teams. Mr Law appeared for ACCA. Mr Jiahao Xie was initially present by telephone but left the hearing before the report was read into the record. Mr Jiahao Xie was not represented.

SERVICE OF PAPERS

2. The Committee had a main bundle of papers numbered pages 1 to 112, additional bundles numbered 1 – 5, and 1 - 4 and a separate service bundle numbered pages 1 to 21. The Committee also had presentation slides from ACCA.

PROCEEDING IN ABSENCE

3. Mr Law applied for the hearing to proceed in Mr Jiahao Xie's absence. He referred to the notice of hearing, which was sent to Mr Jiahao Xie by email dated 29 July 2021 and responded to on 07 August 2021. Mr Law also informed the Committee of his discussions with Mr Jiahao Xie prior to the hearing starting in the presence of the Legal Adviser, in which Mr Jiahao Xie had expressed his wish for the hearing to be "*cancelled*" due to his inability to pay costs.
4. The Committee was satisfied that notice of the hearing had been served in accordance with the Regulations, and that Mr Jiahao Xie was aware of the date and time of the hearing and that it was being conducted remotely. The Committee took into account that Mr Jiahao Xie had initially joined the hearing by telephone and had repeated his request for the hearing to be cancelled. The Committee also had regard to the fact that after Mr Jiahao Xie had left the hearing, he was telephoned again by the Hearings Officer who informed the Committee that Mr Jiahao Xie had declined the call.
5. The Committee considered that Mr Jiahao Xie had voluntarily absented himself and that there was no indication that he would attend on another date. Indeed, the Committee was informed of a further email sent by Mr Jiahao Xie after being called again by ACCA, on the morning of the hearing, in which he requested that ACCA did not contact him again.

6. Taking into account the age of the Allegations and the public interest, the Committee decided to proceed in Mr Jiahao Xie's absence.

APPLICATION TO AMEND ALLEGATIONS

7. Mr Law applied to amend the allegations in the form which had been sent to Mr Jiahao Xie in advance of the hearing by email. He submitted that the proposed amendments were necessary to reflect the evidence and the Regulations. The Committee was satisfied that no prejudice arose and allowed the amendments.
8. However, after the close of the ACCA case and before the Committee had announced its decision on the facts, Mr Law made a further application to amend the stem of Allegation 2 to include 1(b) as well as 1(a). The Committee did not allow that amendment, given its potential to cause prejudice and because Mr Jiahao Xie had not been notified.

ALLEGATION / BRIEF BACKGROUND

9. Mr Jiahao Xie registered as a student member of ACCA on 16 October 2018. He has passes in examinations AB (Accounting in Business) and MA (Management Accounting). ACCA alleged that during a Taxation Examination on 04 June 2019, Mr Jiahao Xie was in possession of unauthorised materials in the form of notes, which he intended to use in order to gain an unfair advantage.

Allegation 1

1. During a Taxation (TX) examination on 04 June 2019, Mr Jiahao Xie:
 - a. Was in possession of unauthorised materials which he had at his desk, contrary to Examination Regulation 5;
 - b. Used or intended to use any or all of the items set out in 1(a) above to gain an unfair advantage, contrary to Examination Regulation 5.
2. Mr Xie's conduct in respect of 1(a) above was:

- a. Dishonest, in that Mr Xie used or intended to use any or all of the unauthorised materials which he had at his desk to gain an unfair advantage in an examination; or in the alternative;
 - b. Contrary to the Fundamental Principle of Integrity
3. By reason of his conduct, Mr Xie is:
- a. Guilty of misconduct pursuant to byelaw 8(a)(i) in respect of any or all of the matters set out in Allegations 1 and 2 above; or
 - b. Liable to disciplinary action pursuant to byelaw 8(a)(iii) in respect of any or all of the matters set out in Allegation 1.

DECISION ON FACTS / ALLEGATION AND REASONS

10. In his various responses to ACCA and in his Case Management Form, Mr Jiahao Xie has admitted that he was in possession of the unauthorised material in question at his Taxation examination on 04 June 2019. The issue for the Committee to decide was whether Mr Jiahao Xie used or intended to use the unauthorised material to gain an unfair advantage and whether his conduct was dishonest and amounted to misconduct.
11. ACCA did not call any witnesses and relied on statements and reports from persons involved in the examination process and information from Mr Jiahao Xie himself.
12. It was not disputed that Mr Jiahao Xie attended the exam centre on 04 June 2019 to sit the Taxation examination. Mr Jiahao Xie admitted the facts of Allegation 1(a) in his responses and in the Case Management Form. The Committee found Allegation 1(a) proved.
13. The evidence of the exam Invigilator was that the unauthorised notes were discovered underneath Mr Jiahao Xie's keyboard some 3 hours after the examination had started and near to the end of the examination time. When the

notes were confiscated, Mr Jiahao Xie tried to snatch them back. In his initial response, Mr Jiahao Xie accepted that he had heard the announcement before the start of the examination about not being allowed to have any unauthorised material but denied that he had read the Examination Regulations. He accepted that *“I had took some notes in my pocket” (sic)*.

14. In an email to ACCA dated 16 July 2019, Mr Jiahao Xie stated that,

“today I write this apology letter with great guilt and regret, and I want to express my deep regret for carrying unauthorized materials in this exam. I hope I can get the forgiveness of the association”.

He then gave an account of his personal circumstances which led to him behaving in that way. He also stated in that email,

“this is a dishonest behavior, which makes the examination unfair. I really shouldn’t have tried to pass the examination in this way.....I chose to carry unauthorized information in order to achieve a better result..... in conclusion, once again apologise and feel guilty for my actions this time, and I hope the committee can give me a chance to correct my mistakes. I really want to study in Indochina best for the study of accounting. I will really appreciate it if you can give me another chance let me continue learning (sic)”

15. The Committee noted that following Mr Jiahao Xie’s above email to ACCA, which was sent only one month after the Examination in question, Mr Jiahao Xie in subsequent communications with ACCA in August 2021, had sought to resile from his acceptance in July 2019 that his conduct had been deliberate and dishonest.
16. In the Examiner’s Irregular Script Report, the Examiner confirmed that the material was relevant to the syllabus and to that particular examination although there was no evidence that Mr Jiahao Xie had actually used the notes in the Examination.

17. The Committee very carefully considered Mr Jiahao Xie's inconsistent explanations as to why he had the notes with him in the exam. The Committee was of the view that if he had brought these notes into the exam inadvertently, as he claimed in his later communications with ACCA, Mr Jiahao Xie would have had no good reason not to have declared to the Invigilator prior to or during the examination that he was inadvertently in possession of these notes.
18. The Committee came to the conclusion that in bringing revision notes which were relevant to the exam syllabus into the exam, which were discovered concealed under keyboard and which he then attempted to snatch back, it was more likely than not that Mr Jiahao Xie intended to use those notes should he need to. It also follows that Mr Jiahao Xie intended to gain an unfair advantage in the exam.
19. The Committee also carefully considered whether Mr Jiahao Xie had rebutted the presumption set out in Exam Regulation 7. The Committee considered that Mr Jiahao Xie, having initially accepted that he had brought the unauthorised materials into the examination, intending to use them in order to secure a pass, had then provided inconsistent and implausible accounts, such as the notes falling out of his pocket and that he put them underneath his keyboard to prevent them falling out of his pocket a second time. The Committee found those later accounts provided by Mr Jiahao Xie were not plausible and were untrue.
20. For all of the above reasons, the Committee found it proved, on the balance of probabilities, that Mr Jiahao Xie intended to use the unauthorised materials in order to obtain an unfair advantage, even though he did not actually use them, and found Allegation 1(b) proved.
21. In considering whether Mr Jiahao Xie had acted dishonestly, the Committee was quite satisfied that intending to cheat amounted to dishonest behaviour. Accordingly, the Committee found Allegation 2(a) proved and did not consider the alternative of the Fundamental Principle of Integrity.

22. Having found that he had acted dishonestly, the Committee had no doubt that Mr Jiahao Xie's conduct amounted to misconduct. Cheating/intending to cheat in exams is one of the most serious breaches of professional behaviour that a student can commit. The Committee therefore found Allegation 3(a) proved and did not consider the alternative Allegation 3(b).

DECISION ON SANCTIONS AND REASONS

23. The Committee heard submissions from Mr Law on behalf of ACCA and received advice from the Legal Adviser. The Committee had regard to the Guidance for Disciplinary Sanctions.
24. The Committee noted that the matters found proved against Mr Jiahao Xie were very serious. The Committee considered the aggravating factors to be that Mr Jiahao Xie's misconduct was premeditated, intended for his own benefit and undermined the trust which the public rightly have in ACCA and its examination process.
25. As mitigating factors, the Committee took into account that Mr Jiahao Xie had fully co-operated with the investigation and process and was of previous good character. The Committee also gave Mr Jiahao Xie some credit for his demonstration of insight and remorse in his email to ACCA dated 19 July 2019, notwithstanding that he subsequently changed that approach.
26. The Committee considered each available sanction in ascending order of seriousness, having concluded that taking no further action was not appropriate. The Committee also considered that issuing an admonishment or a reprimand would not be sufficient or proportionate given the gravity of the matters proved.
27. The Committee carefully considered whether a Severe Reprimand would be sufficient and proportionate or whether removal from the Student Register was required and had careful regard to the factors applicable to each of these sanctions set out in the Sanctions Guidance.
28. The Committee considered that most of the factors applicable to a Severe Reprimand were not applicable in this case particularly, the lack of insight and

remediation, and the lack of relevant testimonials.

29. The Committee considered the other orders which it could impose in combination with a Severe Reprimand and concluded that such a course of action would not be appropriate or sufficient to protect the public interest. The Committee had regard to E 2.2 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.”

30. The Committee was mindful that the Sanction of Removal from the Student Register is the most serious sanction which could be imposed. The Committee also took into account the guidance that this sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being on the student register. It had regard to the Sanctions Guidance at E2.3 which reminds Committees that even where there are mitigating factors, those would have to be so exceptional that a sanction other than removal was warranted.
31. The Committee was satisfied that Mr Jiahao Xie’s misconduct reached the threshold required for removal from the Student Register and that the mitigating factors were not strong enough to warrant a lesser sanction.
32. For all of the above reasons, the Committee concluded that the only appropriate and proportionate sanction was removal from the student register. The Committee did not deem it necessary to impose any minimum period before which Mr Jiahao Xie could re-apply for admission as a student member.

DECISION ON COST AND REASONS

33. ACCA applied for costs in the sum of £5,919.50. The Committee was provided with a statement of means which set out that Mr Jiahao Xie’s income from his

salary amounts to the equivalent of £400.00 per month and that he has no assets.

34. The Committee was satisfied that ACCA's costs as set out in the costs schedule had been properly incurred and were reasonable. However, the Committee had regard to Mr Jiahao Xie's limited ability to pay costs due to his lack of income and his family's limited means. The Committee considered that Mr Jiahao Xie should pay half of his monthly income for a period of 6 months. In all of the circumstances, the Committee ordered that Mr Jiahao Xie pay a contribution to ACCA's costs in the sum of £1,200.00.

IMMEDIATE ORDER

35. The Committee did not deem it necessary to make any immediate orders.

HH Graham White
Chair
26 August 2021