

## HEARING

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

#### REASONS FOR DECISION

<b>In the matter of:</b>	<b>Mr Yimin Ye</b>
<b>Heard on:</b>	<b>Tuesday, 23 February 2021</b>
<b>Location:</b>	<b>Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU</b>
<b>Committee:</b>	<b>Mr Michael Cann (Chair) Mr Ryan Moore (Accountant) Mr Garrett O'Reilly (Lay)</b>
<b>Legal Adviser:</b>	<b>Ms Fiona Barnett</b>
<b>Persons present and capacity:</b>	<b>Mr Phillip Law (Case Presenter) Ms Anna Packowska (Hearings Officer)</b>
<b>OUTCOME:</b>	<b>Allegation 1(a) – found proved Allegation 1(b) – found proved Allegation 1(c) – found proved Allegation 2(a) – found proved Allegation 2(b) – not considered Allegation 3(a) – misconduct found Allegation 3(b) – not considered Sanction – Removal from student register</b>

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**Costs – £6,500**

**Order to take effect immediately**

1. Mr Ye was neither present nor represented.

**MR YE'S APPLICATION FOR A PRIVATE HEARING**

2. Mr Ye completed ACCA's Case Management Form and indicated that he wished for all of his case to be heard in private.
3. Mr Law referred the Committee to Regulation 11(1)(a) Complaints and Disciplinary Regulations 2014, amended 01 January 2020, ("CDR") which states,

*"Hearings of the Disciplinary Committee shall be conducted in public unless the Committee is satisfied:*

*(ii) having obtained the advice of the legal adviser, that the particular circumstances of the case outweigh the public interest in holding the hearing in public, which may include but is not limited to prejudice to any of the parties".*

4. Mr Law submitted that Mr Ye has not provided any reasons for his application to have the hearing held in private, and consequently, the hearing should be heard in public to preserve the principle of open justice.
5. The Committee accepted the advice of the Legal Adviser.
6. The Committee's view was that Mr Ye has not provided any explanation at all as to why his hearing should be held in private. In the absence of an explanation/reasons as to why the hearing should be conducted in private, the Committee could not be satisfied that there were any particular circumstances which outweighed the public interest in holding the hearing in public. The Committee, therefore, refused Mr Ye's application.

## **SERVICE OF PAPERS**

7. The Committee was provided with a Service Bundle numbering pages 1 to 20.
8. The documents in the Service Bundle showed that the notice of the hearing dated 26 January 2021 and a link to the accompanying documents were sent to Mr Ye by email on that date to the address for communications held for him on ACCA's database. The Committee was also provided with the delivery receipts.
9. The Committee was satisfied that the hearing notice has been served in accordance with Regulations 10 and 22 CDR.

## **PROCEEDING IN ABSENCE**

10. Mr Law submitted that the Committee should proceed in Mr Ye's absence. He said there was nothing to suggest that Mr Ye was not aware of the proceedings, that Mr Ye completed the Case Management form, and has engaged with ACCA up until recently. He submitted that there was no good reason to adjourn the hearing.
11. The Committee considered whether to proceed in the absence of Mr Ye. It accepted the advice of the Legal Adviser. It bore in mind that whilst it has a discretion to commence and conduct proceedings in the absence of the member, it should exercise that discretion with the utmost care and caution. The Committee had regard to the factors set out by Lord Bingham in the case of *R v Jones 2002 UKHL 5* and the case of *General Medical Council v Adeogba and Visvardis 2016 EWCA Civ 162*.
12. Mr Ye responded to the notice of hearing on 03 February 2021. On that date, he sent an email to ACCA which stated:

*"As a student at present, I do not have the financial ability to afford such investigation and hearing costs, and I do not think I have cheated."*

13. Following receipt of that email, ACCA made further attempts to contact Mr Ye to seek confirmation of whether it was his intention to attend the hearing. Emails were sent to him on 13 and 22 February 2021, and on 22 February, the Hearings Officer attempted to telephone Mr Ye on two occasions, but he did not answer the calls. Mr Ye was advised by ACCA that he would be able to join the hearing virtually at no cost to himself.
14. The Committee was satisfied that Mr Ye was aware of the hearing, given the email he sent to ACCA on 03 February 2021. Its view was although he said, when he completed the Case Management Form, that he intended to attend the hearing, he has nonetheless subsequently disengaged and waived his right to attend the hearing.
15. The Committee had regard to the public interest in concluding regulatory matters expediently. It bore in mind that Mr Ye has not sought an adjournment and the Committee could find no good reason to adjourn on the face of the information presented to it. It bore in mind that there could be some disadvantage to Mr Ye in not being able to present his account of events if the Committee decided to proceed in his absence. However, Committee had been provided with a bundle of documents which set out his written responses.
16. Overall, in the absence of a good reason to adjourn, the Committee was satisfied that the public interest in proceeding outweighed Mr Ye's interests, and it decided that it was fair to proceed in Mr Ye's absence.

## **ALLEGATIONS**

### **Allegation 1**

- 1) During a Taxation UK examination on 03 December 2019, Mr Yimin Ye:
  - a) Was in possession of unauthorised material, namely notes, contrary to Examination Regulation 4;

- b) Used or intended to use unauthorised material to gain an unfair advantage, contrary to Examination Regulations 6 and 11;
- c) Engaged in improper conduct designed to assist him in his exam attempt contrary to Examination Regulation 9.

2) Mr Yimin Ye's conduct at Allegation 1(a), (b) and/or (c) was:

- (a) Dishonest, in that he used or intended to use unauthorised material to gain an unfair advantage in an examination; or in the alternative,
- (b) Contrary to the Fundamental Principle of Integrity (as applicable in 2019).

3) By reason of his conduct Mr Yimin Ye is:

- (a) Guilty of misconduct pursuant to byelaw 8(a)(i), in respect of any or all of the matters set out at Allegations 1 and/or 2; or in the alternative
- (b) Liable to disciplinary action pursuant to byelaw 8(a)(iii), in respect of Allegations 1(a), (b) and/or (c).

## **BRIEF BACKGROUND**

- 17. Mr Ye first registered as an ACCA student on 13 September 2018.
- 18. On 03 December 2019, Mr Ye attended the C724/1 examination centre in Shanghai in order to sit the Taxation UK examination. The exam commenced at 13:30pm and was due to last for 3 hours.
- 19. It is alleged that at 13.45pm, Invigilator 1 found unauthorised material under Mr Ye's keyboard.

20. In its consideration of this matter, the Committee had before it a bundle of papers numbering pages 1 to 81.

### **DECISION ON ALLEGATIONS AND REASONS**

21. The Committee accepted the advice of the Legal Adviser. She advised, amongst other matters, that the burden of proof rests with ACCA and that the standard of proof is the civil standard, which is the balance of probabilities. She further advised that Mr Ye's absence should not be held against him.
22. However, the Legal adviser reminded the Committee that if Mr Ye is found to have been in possession of unauthorised materials, and if ACCA proves that the unauthorised materials are relevant to the syllabus being examined, then a "*reverse burden*" of proof will apply in relation to Allegation 1(b). It will be assumed that Mr Ye intended to use the materials to gain an unfair advantage unless he can prove otherwise.

#### **Allegation 1(a) – found proved**

23. The Committee was provided with a copy of ACCA's register entry for Mr Ye. It was satisfied that Mr Ye became a student member of ACCA on 13 September 2018, and consequently, he is bound by ACCA's regulations.
24. The Committee had regard to the SCRS1B form completed by Invigilator 1. This stated that a "*taxation note*" was found under the keyboard at Mr Ye's desk at 13.45pm during the Taxation UK exam on 03 December 2019.
25. Mr Ye does not dispute that he sat the Taxation UK exam on 03 December 2019. He accepted, when he completed the SCRS2B form after the exam, that he was in possession of the note found by the Invigilator during the taxation exam.
26. During ACCA's investigation into this matter, Mr Ye apologised for bringing "*unauthorised*" material into the exam by mistake. The Committee bore in mind that student notes do not fall within the category of items that a student is

permitted to take into an ACCA exam. The Committee was, therefore, satisfied that Mr Ye was in possession of unauthorised material during the Taxation exam on 03 December 2019, and that his possession of this material breached Exam Regulation 4. The Committee found this allegation proved.

#### **Allegation 1(b) – found proved**

27. The Committee had regard to Exam Regulation 6, which states:

*If you breach exam regulation 4 and the ‘unauthorised materials’ are relevant to the syllabus being examined, and or you use or attempt to use any unauthorised item or items in the breach of regulation 5 above it will be assumed that you intended to use it or them to gain an unfair advantage in the exam. In any subsequent disciplinary proceedings, you will have to prove that you did not breach regulations 4 and/or 5 to gain an unfair advantage in the exam.”*

28. The Committee first considered whether the unauthorised materials were relevant to the syllabus being examined. It received an irregular script report, in which the author of the report confirmed that the unauthorised materials were relevant to the syllabus being examined, although stated that the materials had not been used during the exam.
29. Mr Ye, when he completed the SCRS2 form, did not accept that the unauthorised materials were relevant to the syllabus being examined, saying the “datas” are provided in the exam. The Committee accepted the evidence provided by the author of the irregular script report, which was objective and impartial. It found that the unauthorised materials were relevant to the syllabus being examined.
30. Having found that the unauthorised materials were relevant to the syllabus being examined, the Committee assumed, as a starting point in accordance with Exam Regulation 6, that Mr Ye intended to use the materials to gain an unfair advantage in the exam. It considered whether Mr Ye had discharged the reverse burden, ie. whether he has proved, on the balance of probabilities, that

he did not possess the unauthorised materials to gain an unfair advantage. In so doing, it considered his responses both at the time of the exam, and during ACCA's investigation into this matter.

31. Mr Ye completed the SCRS2B form after the exam. In that document he stated that he had some "*datas*" in the tax note which he thought would not be present in the exam, but which were provided. He said that he did not use or attempt to use the material and never looked at it. He said that he had not prepared for the exam very well, and if he had, he would have known that the "*datas*" are provided.
32. Mr Ye subsequently responded to ACCA during the investigation into this matter. In his email dated 26 February 2020, he said that the material was used for himself in "*daily practice*". He explained that the exam took place on a cold day, that he had worn many clothes and travelled far to get to the exam. He said that he arrived late, took his jacket off, put it on the desk and the notes rolled out on to the desk. He said that before the exam he had put his phone away but forgot the notes. When he noticed them, the exam had started and he just concentrated on exam, leaving the notes alone. He said he didn't want to read the notes which were pushed by his jacket, half under the keyboard and half out. Mr Ye said he never looked at the notes because he was concentrating and was nervous. He said that he did not want to hide it and promised this will never happen again. Mr Ye said he has passed exams before and never cheated.
33. Mr Ye provided a further response when he completed the Case Management Form. In this response, he stated that he took the note into the exam by mistake and did not use or intend to use the material. He reiterated that he had worn too many clothes that day, that he rushed to the exam room, took off his jacket, and the material which helps him in his daily exercise rolled down to the desk. He said it was not totally under the keyboard, but was next to it. He said he did not notice the note at all and thought it had been left by other people.
34. The Committee found that the explanations provided by Mr Ye were not consistent. His initial explanation, (provided by him when he completed the



SCRS2 form after the exam), appeared to suggest that he took the material into the exam deliberately because he was unsure whether the data would be provided. In subsequent explanations, he suggested that he had no knowledge of the material and that it must have fallen out of his coat onto his desk when he removed his coat. Given the inconsistency in Mr Ye's accounts, the Committee could not rely on his explanations. He had provided no other evidence to persuade the Committee that he did not intend to use the unauthorised material to gain an unfair advantage in the exam.

35. The Committee, therefore, concluded that Mr Ye had not persuaded it, on the balance of probabilities, that he did not intend to use the unauthorised material to gain an advantage in the exam. He had failed to discharge the reverse burden set out in Exam Regulation 6. There was no evidence to suggest that he had in fact used the material, however, the assumption set out in Exam Regulation 6, that he intended to use the unauthorised material to gain an unfair advantage, remained, and the Committee found Allegation 1(b) proved.

#### **Allegation 1(c) – found proved**

36. In deciding Allegation 1(c), the Committee had regard to its findings in Allegations 1(a) and 1(b). It had found that Mr Ye was in possession of unauthorised material during the Taxation UK exam, and that he intended to use that material to gain an unfair advantage during the exam. In the Committee's view, as a matter of common sense, this behaviour amounted to improper conduct which was designed to assist him in his examination attempt, even if it did not, in fact, assist him. The Committee, therefore, found Allegation 1(c) proved.

#### **Allegation 2(a) – found proved**

37. The Committee then decided whether Mr Ye's conduct in Allegations 1a, b, and/or c was dishonest. In deciding this, the Committee reminded itself, as advised, of the test set out by Lord Hughes at paragraph 74 of *Ivey v Genting Casinos 2017 UKSC 67*. The Committee must first ascertain, subjectively, the actual state of the individual's knowledge or belief as to the facts. Then, once

his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people.

38. The Committee had already found, in Allegation 1(b) above, that Mr Ye failed to discharge the reverse burden of proof. Consequently, his intention was to use the unauthorised materials to gain an unfair advantage for himself during the exam. It had also found that this was improper conduct which was designed to assist him in the exam
39. The Committee was satisfied that taking unauthorised materials into a professional exam, with the intention of using them to gain an unfair advantage in that exam, was conduct which would be regarded as dishonest in accordance with the standards of ordinary decent people. It, therefore, found that Mr Ye's conduct in Allegations 1(a), (b) and (c) was dishonest, and it found Allegation 2(a) proved.

**Allegation 2(b) – not considered**

40. In the light of the Committee's findings in relation to Allegation 2(a), it did not go on to consider Allegation 2(b) which was laid in the alternative.

**Allegation 3(a) – guilty of misconduct**

41. The Committee was satisfied that Mr Ye's actions were sufficiently serious to amount to misconduct. He had dishonestly taken unauthorised notes into the examination with the intention of using these to gain an unfair advantage for himself. The Committee was in no doubt that this conduct was deplorable and fell seriously short of the standards expected of an ACCA student. This was conduct which would bring discredit to Mr Ye, to ACCA and to the accountancy profession. The Committee was satisfied that Mr Ye was guilty of misconduct in respect of Allegations 1 and 2.

### **Allegation 3(b) – not considered**

42. In the light of the Committee's findings in relation to Allegation 3(a), it did not consider Allegation 3(b) which was laid in the alternative.

### **SANCTIONS AND REASONS**

43. The Committee accepted the advice of the Legal Adviser who referred the Committee to ACCA's current Guidance on Disciplinary Sanctions, ("the Guidance"). It bore in mind that it must act proportionately at this stage, balancing the member's interests against the public interest, and that any sanction imposed must be no more than necessary to meet the purpose of a disciplinary sanction.
44. The Committee first considered the seriousness of the conduct found proved before deciding upon any sanction (in accordance with paragraph E3 of the Guidance). In so doing, it considered whether there were any aggravating factors. It identified the following aggravating factors:
- Mr Ye's conduct was dishonest.
  - His conduct, in taking unauthorised material into an examination, could have given rise to personal benefit.
  - Mr Ye's misconduct had the potential to significantly undermine the trust that the public place in the accountancy profession.
45. The Committee also considered whether there were any mitigating factors. Mr Law informed the Committee that there were no previous disciplinary findings against Mr Ye. The Committee accepted that this was a mitigating factor, however, given that Mr Ye had been a member since September 2018, it attached little weight to this as a mitigating factor. Overall, given that Mr Ye's misconduct involved dishonest behaviour, the Committee found that his conduct was very serious.

46. The Committee first considered whether to conclude this case without taking further action. It decided that this would not be sufficient to uphold the public interest given the serious nature of the facts found proved against Mr Ye.
47. The Committee next considered whether an Admonishment would be an appropriate and proportionate sanction. It had regard to paragraph C2 of the Guidance. The incident was an isolated one, however, none of the other factors which would support an Admonishment applied. It, therefore, decided that an Admonishment was insufficient to reflect the serious nature of Mr Ye's dishonest behaviour.
48. The Committee next considered whether a Reprimand would be an appropriate and proportionate sanction. The Committee considered paragraph C3 of the Guidance. It bore in mind that this sanction is usually appropriate, "...*where the conduct is of a minor nature.....*". The conduct found proved involved dishonesty, which the Committee had found was very serious. The Committee, therefore, decided that a Reprimand was neither appropriate nor proportionate to address the public interest.
49. The Committee next considered a Severe Reprimand and considered paragraph C4 of the Guidance. The factors set out in the Guidance which might support a Severe Reprimand were that Mr Ye has a previous good record with ACCA, he co-operated with ACCA during the investigation stage and this was an isolated incident. However, his conduct in taking unauthorised material into an exam with the intention of gaining an unfair advantage was deliberate and could have caused "*harm*" if he had been able to use that material.
50. The Committee was mindful that there were factors which could justify imposing a Severe Reprimand. However, it decided, given that it had made a finding of dishonesty, that this finding was so serious that a Severe Reprimand would not be sufficient in all the circumstances to uphold the public interest. The public interest includes protection of the public, maintenance of public confidence in the profession, and declaring and upholding proper standards of conduct and performance.

51. The Committee next considered Removal of Mr Ye's name from the student register. It considered paragraph C5 of the Guidance and also had regard to paragraph E2 which addresses cases involving dishonesty. Paragraph E2.2 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.”*

52. The Committee found that Mr Ye's actions amounted to a serious departure from expected standards. He had knowingly taken unauthorised materials into a professional exam and intended to use these to gain an unfair advantage for himself. He had acted dishonestly and disregarded the Exam Regulations. The Committee found that this behaviour had the potential to significantly undermine the trust placed by the public in the accountancy profession. The Committee was satisfied that there was no evidence before it to mitigate the seriousness of Mr Ye's behaviour. His good record with ACCA served as very limited mitigation, given that he had been a student member for a relatively short period of time, and when weighed against the seriousness of the misconduct. The Committee concluded that Mr Ye's dishonest conduct was fundamentally incompatible with continued membership as a registered student.
53. Taking into account the seriousness of the case and balancing the interests of Mr Ye, the interests of ACCA and the public interest, the Committee concluded that Removal would therefore be the proportionate sanction in the circumstances of this case. It concluded that any sanction less than Removal would not be sufficient to uphold the public interest.
54. The Committee ordered that Mr Ye be removed from the student register.

## **COSTS AND REASONS**

55. Mr Law on behalf of ACCA applied for costs in the sum of £7,135.
56. Mr Ye made reference in his response to the notice of hearing, to his inability to afford the investigation and hearing costs. However, he has not provided a statement of means or any other information about his income, expenditure, or financial circumstances which might assist the Committee in determining the issue of costs.
57. The Committee bore in mind that the costs were properly incurred by ACCA and all the facts were found proved. The hearing had, however, taken less than one day (as estimated in the costs schedule), and for this reason, the Committee decided to apply a discount to the costs to reflect this. In the absence of proper information from Mr Ye about his financial circumstances, the Committee was unable to identify any other justification for discounting the costs.
58. The Committee ordered that Mr Ye pay costs of £6,500 to ACCA, which it decided was an appropriate sum in all the circumstances.

## **EFFECTIVE DATE OF ORDER**

59. The Committee decided that in the interests of the public, the order shall have immediate effect pursuant to Regulation 20(1)(b) CDR. It decided that allowing the order to take effect at the end of the appeal period would not be sufficient to maintain public confidence in the profession, or to uphold proper standards of conduct, given the seriousness nature of the facts found proved, which included a finding of dishonesty.

**Mr Michael Cann,  
Chair  
23 February 2020**