

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Ms Ying Zhong
Heard on:	Tuesday, 30 November 2021
Location:	Held remotely by video conference
Committee:	Mrs Helen Carter-Shaw (Chair) Ms Jo Royden-Turner (Accountant) Dr Jackie Alexander (Lay)
Legal Adviser:	Mr Andrew Granville Stafford
Persons present and capacity:	Mr Benjamin Jowett (ACCA Case Presenter) Ms Nkechi Onwuachi (Hearings Officer)
Observers:	None
Outcome:	Allegations 1 and 3 found proved Allegations 2.1 and 2.2 not proved Severe reprimand Costs of £5,262

INTRODUCTION

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Miss Zhong Ying.

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2. The Committee had before it a bundle of documents (65 pages), an additional bundle (2 pages) and a service bundle (16 pages).

PROCEEDING IN ABSENCE

3. Ms Zhong did not attend the hearing and was not represented.
4. Notice of today's hearing was sent by email to Ms Zhong's registered email address on 02 November 2021. ACCA provided the Committee with a delivery confirmation confirming receipt. Further emails were sent on 16 and 26 November 2021 inviting Ms Zhong to attend the hearing. No response has been received from Ms Zhong.
5. The Committee was satisfied that the requirements of Regulations 10(1) and 22(5) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations ('CDR') as to service had been complied with.
6. Having satisfied itself that service had been effected in accordance with the regulations, the Committee went on consider whether to proceed in the absence of Ms Zhong. The Committee bore in mind that the discretion to do so must be exercised with the utmost care and caution.
7. The Committee noted that the email address to which the hearing notice had been sent was the same one that Ms Zhong had previously used to communicate with ACCA. However, it had been over 2 years since her last engagement. She had not replied to the notice of hearing and had not asked for an adjournment. She had, in the Committee's view, made a deliberate decision not to take part in the hearing. The Committee considered, in those circumstances, that the likelihood of her engaging if the case did not proceed today was small. Further, there was a clear public interest in dealing with matters such as this expeditiously.
8. The Committee therefore determined to proceed in Ms Zhong's absence.

AMENDMENT

9. Mr Jowett on behalf of ACCA applied to amend the allegations by adding the word 'paragraph' before the number 1 in paragraph 2 and the word 'above' after the number. He also applied to amend paragraph 2.1 of the Allegation, by replacing '1.1' with 'paragraph 1'.

10. CDR 10(5) allows the Committee to amend the allegations provided that the relevant person is not prejudiced in the conduct of their defence. These were minor and, in the Committee's view, uncontroversial amendments. The Committee allowed the application.

ALLEGATIONS AND BRIEF BACKGROUND

11. The allegations faced by Ms Zhong, as amended, were as follows.

ACCA student Miss Zhong Ying:

1. *Between 06 August 2019 and 30 August 2019, Miss Zhong caused to be published and offered to sell ACCA F1, F3, and F4 exam questions on the Taobao web site, a China based consumer to consumer online market website.*
 2. *Miss Zhong Ying's conduct in respect of any or all of the matters set out at paragraph 1 was:*
 - 2.1 *Dishonest in that she offered to provide assistance to other exam entrants to gain an unfair advantage in one or more of the ACCA exams referred to in paragraph 1 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/or 2.1 and/or 2.2 above, in [sic] Miss Zhong is guilty of misconduct pursuant to byelaw 8(a)(i).*
12. Ms Zhong was admitted as a student member of ACCA on 01 June 2017.
 13. Ms Zhong gained exemptions from ACCA exams F1 Accountant in Business (AB), F2 Management Accounting (MA) and F3 Financial Accounting (FA). She sat and passed the F4 Corporate and Business Law (LW) exam.
 14. The F4 exam is a Computer Based Exam ('CBE'). Students book their exams directly with a local CBE centre. They are issued with a student information sheet. This contains ACCA's Examination Regulations. Regulation 6 prohibits a student using a mobile phone or a camera during an exam.

15. Ms Zhong sat the F4 exam on 27 June 2019 at an exam centre in China. To start the exam, she had to log in using her registration number and date of birth. The Invigilator also checks the student's photo ID. On completing the exam, the student's mark is displayed on the screen.
16. ACCA received a referral from the British Council office in China. The British Council found that ACCA CBE questions from papers F1, F3 and F4 were being offered for sale on a Chinese based consumer website, Taobao.com.
17. Although the pages were subsequently removed from the website by Ms Zhong, screenshots were obtained before the pages were taken down.
18. The advert included a screenshot of an F4 exam results page. The name of the student and exam centre had been covered over. However, Ms Zhong's ACCA ID number was visible in the bottom left-hand corner and had not been obscured. Further, it bore the date of 27 June 2019, which is the date on which Ms Zhong took the F4 exam, and it showed the student had obtained a pass mark of 61%, which is the mark Ms Zhong had obtained in that paper.
19. ACCA wrote to Ms Zhong on 06 November 2019 asking a number of questions about the postings on the Taobao website. Ms Zhong replied the same day. She said:

'First i am so so sorry about this.

Second on the day of my f4 exam when I was doing my test i haven't take any picture about the f4 real content of examination. Primarily after I passed the exam, due to happiness and for memory I just took one picture of the "Pass " page.(You referred one .) I promise that I have never ever taken picture about the real content of ACCA exam. On the other hand, before I passed the exam i did any exercises like Bpp or searched online. One day by accident I found some Exam questions which I got on Weibo/Sina microblog(Chanel like attachment) and it helped me for review knowledge point. However I put the picture of "Pass "Page on Taobao for telling someone these were good for review(I saw some people do it also before) but the other picture which contained some Exam question was I got from Weibo then downloaded. Attachment you can see on the top of the picture there is a contact information of QQ.And I don't know about him or her I just downtowned. And one day I did got an Intellectual property complaint about F4 from ACCA on Taobao .On that day I realized that I made a mistake and I immediately put it off on Taobao. And

after that I have never put it back again and never shared with others again. I will confess. (sic)

Finally, I am sorry that I did this stupid things. I promise that I will not do it again never I will attach more importance on ACCA exam rules and keep a good moral rule. (sic)

Forgive me for my poor English if you have any other question you can email me' (sic)

20. ACCA accepted that the questions Ms Zhong had advertised for sale were not from her own exams and, indeed, she had been granted exemption from the F1 and F3 exams. ACCA did not dispute her account that she had herself obtained the questions from a different website. ACCA's case, however, was that it was illicit for students to sell exam questions and that, by doing so, Ms Zhong was assisting others to gain an unfair advantage in their ACCA exams.
21. ACCA relied on a witness statement from Ms A, a Senior ACCA CBE Administrator. She said that students do not have the authority to sell, supply or publish exam questions. The selling of images of questions taken from actual exams is likely to give a student an unfair advantage because there is a probability that the question, or minor variation of it, will appear during the exam they are studying for.

DECISIONS ON ALLEGATIONS AND REASONS

22. The Committee considered the documents before it, the submissions of Mr Jowett on behalf of ACCA and the advice of the Legal Adviser. The Committee bore in mind that the burden of proving an allegation rests on ACCA and the standard to be applied is proof on the balance of probabilities.

Allegation 1

23. The Committee first had to consider whether it was satisfied that Ms Zhong had offered F1, F3 and F4 exam questions for sale on the Taobao website between 06 August 2019 and 30 August 2019.
24. The Committee was provided with screenshots of two web pages from the Taobao website.

25. One showed an item for sale which was described in Chinese as '*ACCA, sorting previously examined references for computer-based exam F4 + sample test paper F4 from a database of test questions, including answers.*'
26. The page had a 'buy now' button and a price of RMB 6. Importantly, the page had a photograph taken of a computer showing an ACCA CBE results page. Though some of the personal details on the page were obscured, it was clear to the Committee that this photograph was taken by Ms Zhong of the F4 exam she sat in June 2019. The date of the exam, the pass mark and the student number all linked the photograph to Ms Zhong's exam and, indeed, she admitted taking a photograph of her results page in her email to ACCA on 09 November 2020.
27. The other webpage also showed an F4 paper for sale for RMB 6. In addition, it showed an F1 paper for sale for RMB 5. It also appeared to show an F3 paper for sale, although the screenshot provided to the Committee was truncated and no price was visible. However, the Committee was satisfied that it was reasonable to draw the inference that an F3 paper, as well as the F4 and the F1 papers, were being offered for sale in this posting.
28. Whilst the Committee noted that Ms Zhong did not expressly admit in her email to ACCA's investigations team that she was selling these papers, she did accept that she was responsible for these postings on the Taobao website. The date on one of the pages was 28 August 2019, and the Committee considered it reasonable to conclude that the two pages were posted at the same time. It was therefore satisfied that Ms Zhong had offered F1, F3 and F4 exam questions for sale on the Taobao website between 06 August 2019 and 30 August 2019.
29. The Committee therefore found Allegation 1 proved.

Allegation 2.1

30. The Committee had to consider whether Ms Zhong's conduct in offering the exam questions for sale was dishonest in that she offered to provide assistance to other exam entrants to gain an unfair advantage in return for payment. It bore in mind the approach to allegations of dishonesty as set out in the case of *Ivey v Genting Casinos*.
31. Ms Zhong's account, which was accepted by ACCA, was that she had obtained the questions she was selling from a different website. They were not,

therefore, questions that had been in exams that she had sat. Indeed, she had obtained exemption from the F1 and F3 exams.

32. In the Committee's view, there was nothing wrong per se with making old exam questions available for study purposes. It noted, in particular, that ACCA sells practice exam questions, though not answers, through its website. Indeed, in the Committee's view, practising on old exam questions is a legitimate form of study.
33. ACCA's case was that the exam questions Ms Zhong was offering for sale were 'live' in the sense that they were from contemporaneous examination scripts and therefore might still be being used in the CBEs. The Committee carefully considered the witness statement of ACCA's Senior CBE Administrator, but was not satisfied to the requisite standard that it proved this element of ACCA's case. There were no screenshots on the Taobao website of the actual questions that were being offered for sale.
34. The evidence before the Committee was that all three of the papers were being advertised for sale as 'previously examined' and that they were not from any exam that Ms Zhong had sat. The Committee was therefore unable to conclude that these questions were 'live', or, if they were, that Ms Zhong knew them to be.
35. In those circumstances, the Committee could not find that Ms Zhong was deliberately providing assistance to other candidates to gain an unfair advantage. Allegation 2.1 was therefore not made out. The Committee did not consider that ordinary members of the public would consider it was dishonest to sell old, as opposed to current, exam questions.
36. Allegation 2.1 was found not proved.

Allegation 2.2

37. Allegation 2.2 alleged that Ms Zhong had breached the Fundamental Principle of Integrity in that her conduct in selling the exam questions was not straightforward and honest.
38. The Committee had found, in relation to Allegation 2.1, that ACCA had failed to prove Ms Zhong's actions were dishonest. Therefore, it could not be satisfied on the balance of probabilities that these actions were not honest, given that being dishonest and not being honest amount to the same thing.

39. The Committee was reminded that the concept of professional integrity encompasses more than merely acting honestly (see *Wingate & Evans v SRA* [2018] EWCA Civ 366). However, Allegation 2.2 alleged that Ms Zhong had breached the Fundamental Principle of Integrity. The Fundamental Principle of Integrity in ACCA's Code of Conduct and Ethics ('the Code') bears a specific definition. Section 110.1 of the Code, as applicable in 2019, says that this principle requires an accountant to be '*straightforward and honest in all professional and business relationships*'.
40. Therefore, this principle is only breached if the conduct in question is found to be not straightforward and not honest. Further, Allegation 2.2 specifically required the Committee to find that Ms Zhong's actions in offering the questions for sale were '*not straight forward and honest*'.
41. The Committee was taken to the case of *R (May) v The Chartered Institute of Management Accountants* [2013] EWHC 1574 (Admin), in which Mr Justice Stadlen considered an identically worded provision in CIMA's Code of Conduct. He found that the requirement to act in a straightforward manner is broadly synonymous with a requirement to be honest. He said:
- 'When applied to human conduct or behaviour, the word straightforward is commonly used in the sense of honest and frank, not circuitous or evasive, honest and open, not trying to trick somebody or to hide something. In other words it is broadly synonymous with honest.'*
42. Having found that Ms Zhong's actions were not dishonest and applying this definition of the concept of 'straightforward' conduct, the Committee could not find either that Ms Zhong's conduct was not straightforward nor that it was not honest.
43. Therefore, the Committee found Allegation 2.2 not proved.

Allegation 3

44. The Committee had to consider whether the conduct it had found proved in relation to paragraph 1, namely that Ms Zhong had offered ACCA exam questions for sale on the internet, amounted to misconduct and therefore rendered her liable to disciplinary action under byelaw 8(a)(i).

45. Misconduct is an act or omission which falls seriously short of what would be proper in the circumstances. It encompasses conduct which is discreditable to the member, the Association and the profession of accountancy.
46. The Committee had been unable to find, for the reasons set out above, that questions being offered for sale were 'live'. However, the Committee considered that Ms Zhong was, at the very least, reckless as to whether or not the questions she was selling were still being used in CBEs. Further, in the Committee's view, it lacked integrity - in the wider sense of the term rather than the specific definition in the Code – for a student to be selling ACCA exam questions.
47. The Committee also noted that Ms Zhong accepted she had made a mistake and had apologised for her actions. There was an implied acceptance on her part that what she had done fell short of the standards expected of her as an ACCA student.
48. The Committee was satisfied that this conduct crossed the line of acceptable behaviour and brought discredit to Ms Zhong and potentially on the profession as a whole as well as undermining confidence in the integrity of ACCA's exam system.
49. The Committee therefore considered that Ms Zhong's actions did amount to misconduct and, accordingly, it found Allegation 3 proved.

SANCTION AND REASONS

50. The Committee considered what sanction, if any, to impose taking into account ACCA's Guidance for Disciplinary Sanctions ('GDS') and the principle of proportionality. The Committee bore in mind that the purpose of sanctions was not punitive but to protect the public, maintain confidence in the profession and declare and uphold proper standards of conduct and behaviour. It took into account the submissions of the parties and the advice of the Legal Adviser.
51. The Committee took into account that no previous disciplinary findings had been made against Ms Zhong. It also considered that the fact she had made an apology to ACCA and had taken the postings down promptly showed some degree of insight. Also, as a mitigating factor, the Committee took into account the fact that Ms Zhong had, initially at least, co-operated with the investigation.

52. The Committee did not consider there were any aggravating factors, save that Ms Zhong's insight was clearly limited in that she appeared not to recognise the effect her actions could have had on the efficacy of the exam system and confidence in ACCA and the accountancy profession.
53. Having found that Ms Zhong's actions amounted to misconduct, taking no further action was clearly not appropriate. The Committee therefore considered the available sanctions in ascending order of seriousness.
54. The Committee considered, taking into account the guidance in the GDS, that an admonishment would not be a sufficient sanction.
55. In considering a reprimand, the Committee noted that some of the factors identified in the GDS as being relevant to this sanction were present. Ms Zhong had admitted, when confronted with it, that she was responsible for the postings on Taobao. She accepted that she had done wrong and took steps to remedy the conduct by taking the posts down. However, the misconduct was not, in the Committee's view, of a minor nature and, furthermore, it was deliberate. It therefore considered that a reprimand was not a proportionate sanction.
56. The Committee was of the view that a severe reprimand was the appropriate and proportionate sanction. In considering the guidance in the GDS in respect of severe reprimand, the Committee noted that this was an isolated incident. There was no evidence of repetition and the Committee considered it unlikely that such conduct would be repeated in the future. Ms Zhong has a previous good record and had taken corrective steps. There had been an expression of apology, she had co-operated in the early stages of the investigation and had shown at least some insight.
57. Therefore, pursuant to CDR 13.4(b), Ms Zhong is severely reprimanded.

COSTS AND REASONS

58. ACCA applied for costs in the sum of £5,487.00. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing (additional bundle 6 pages). Ms Zhong had provided no information about her financial circumstances.
59. The Committee considered that in principle a costs order should be made in favour of ACCA. The Committee was satisfied that the costs were reasonable

and had been properly included, subject to a reduction to reflect the fact that the hearing had taken less than a full day.

60. The Committee determined that the appropriate order was that Ms Zhong pay ACCA's costs in the sum of £5,262.00.

EFFECTIVE DATE OF ORDER

61. The order will come into effect from the date of expiry of the appeal period, namely after 21 days from service of this written statement of the Committee's reasons for its decision, unless Ms Zhong gives notice of appeal in accordance with the Appeal Regulations prior to that.

Mrs Helen Carter-Shaw
Chair
30 November 2021