

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Yifan Yuan

Heard on: Tuesday, 28 September 2021

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

Committee: Mrs Helen Carter-Shaw (Chair)
Mr David Horne (Accountant)
Mr Damian Kearney (Lay)

Legal Adviser: Mr David Marshall (Legal Adviser)

**Persons present
and capacity:** Ms Michelle Terry (ACCA Case Presenter)
Ms Nkechi Onwuachi (Hearings Officer)

Observers: None

Summary Removed from the student register

Costs: Student to pay ACCA cost in the sum of £4613.50.

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SERVICE OF PAPERS

1. The Committee heard an allegation of misconduct against Mr Yuan. Ms Terry appeared for ACCA. Mr Yuan was not present and not represented.
2. The Committee had a main bundle of papers containing 77 pages, a service bundle containing 14 pages, and a one-page telephone attendance note of an unsuccessful attempt to contact Mr Yuan the previous day.

PROCEEDING IN ABSENCE

3. The Committee was satisfied that Mr Yuan 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 27 August 2021 to an email address notified by Mr Yuan to ACCA as an address for all correspondence.
4. Mr Yuan completed a Case Management form on 13 May 2021 in which he said that he did not intend to attend the hearing of his case and he consented to the Disciplinary Committee proceeding with his case in his absence. After that date there were attempts to contact him – most recently yesterday – to see if he had changed his position but there was no response. The Committee concluded that Mr Yuan did not wish to exercise his right to be present and that it would be fair to proceed in his absence. The Committee determined to take into account the written representations from Mr Yuan.

ALLEGATION(S)/BRIEF BACKGROUND

5. Mr Yuan has been a student of ACCA since January 2019. On 10 July 2020, he took a Financial Management exam at an examination centre in China. The exam started at 09:00. An Invigilator reported that at 12:03, while collecting scrap paper, a mobile phone holding photographs of study notes was found at Mr Yuan's desk.
6. Mr Yuan faced the following allegations (the Committee having amended allegation (c) to correct an obvious spelling mistake in Mr Yuan's name):

Allegation 1

- a. During a Financial Management (FM) examination on 10 July 2020, Mr Yifan Yuan:
 - i. Was in possession of and used or intended to use in the course of the exam an unauthorised item, namely a mobile phone, contrary to Examination Regulation 5.
 - ii. Was in possession of unauthorised materials in the form of notes stored or otherwise accessible on the mobile phone referred to in Allegation (a)(i) above, contrary to Examination Regulation 4.
- b. Mr Yifan Yuan intended to use the mobile phone and materials stored or otherwise accessible on that mobile phone as referred to above to gain an unfair advantage.
- c. Mr Yifan Yuan's conduct in respect of Allegation 1(a) and/or Allegation 1(b) above was:
 - i. Dishonest, in that Mr Yifan Yuan intended to use the mobile phone and notes to gain an unfair advantage in the exam; or in the alternative
 - ii. Contrary to the Fundamental Principle of Integrity (as applicable in 2020) in that such conduct is not straightforward and honest.
- d. By reason of his conduct, Mr Yifan Yuan is:
 - i. Guilty of misconduct pursuant to byelaw 8(a)(i), in respect of any or all of the matters set out at Allegations 1(a) to 1(c) above; or in the alternative
 - ii. Liable to disciplinary action pursuant to byelaw 8(a)(iii), in respect of Allegation 1(a) above.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

7. The Committee was provided with a form SCRS 1B completed by the Invigilator immediately after the exam which described finding a mobile phone '*on the table, under the writing board*'. The Invigilator said that Mr Yuan attempted to conceal it by putting it together with his calculator, which was of similar appearance, and then putting them between his legs. The Invigilator obtained the phone. The Invigilator stated, '*I am not sure whether the unauthorised materials have been used by the student*'. The phone was locked when found.
8. The Committee was provided with a form SCRS 2B completed by Mr Yuan immediately after the exam. He admitted that he was in possession of a phone but stated that he had not used it, had not attempted to use it and did not intend to use it.
9. The phone was examined and ACCA obtained an Irregular Script report about the material found on the phone. The report stated that the material was relevant to the syllabus and was relevant to this particular exam. The Committee saw photographs or screen shots of what was on the phone. There were detailed notes on topics such as Islamic Finance and Stock and Dividend transactions. One document was apparently a photograph of the phone as it was at 12:45 showing a picture of a model answer taken at 08:27, shortly before the exam started.
10. The Committee was provided with an email dated 08 February 2021 from an employee of the British Council responsible for the exam arrangements. This stated that candidates had been told repeatedly not to bring mobile phones into the examination hall but to leave them in a designated place outside. The email confirmed that one of the photographs on the phone had been taken on the morning of the exam and some or all of the others were taken the day before.
11. Mr Yuan set out his position in a number of emails and in the Case Management form. He accepted that he was in possession of the phone in the exam and that the phone contained or gave access to photographs of study materials. He said he was in the habit of photographing notes on his iPad in preparation for the exam. His iPad synchronised with his iPhone, so the notes were available on that, too. He said that on the day of the exam there was a change of venue and

he arrived late and flustered. As a result, he forgot to check whether his mobile phone was on him. He admitted that he *'accidentally brought the mobile phone into the examination room'* but he denied that he had used the phone or gained any advantage from it. In the Case Management form, he said that *'the monitoring of the examination can prove my innocence'*. Ms Terry was not able to say if there had been any video recording of the examination.

12. The Committee was told that there was no record of Mr Yuan arriving late.
13. In relation to Allegation 1(a)(i), there was no dispute that Mr Yuan was in possession of a mobile phone, but the Committee found that this was not contrary to Examination Regulation 5. That Regulation prohibited *'use or attempt to use'* but not possession. Similarly, Regulation 5 did not prohibit an intention to use a mobile phone. The remaining matter alleged was that Mr Yuan had in fact used the phone. ACCA had no evidence of use and the Committee noted that the Invigilator did not know if the phone had been used. Accordingly, **the Committee found Allegation 1(a)(i) not proved.**
14. Allegation 1(a)(ii) related to the possession of the notes on the phone rather than the phone itself. Mr Yuan admitted that he had the phone with him and that the notes were available on it. This was a breach of Examination Regulation 4 which specifically refers to possession. Accordingly, **the Committee found Allegation 1(a)(ii) proved.**
15. In relation to Allegation 1(b), the Committee noted that Mr Yuan had concealed the phone under his *'writing board'* and he tried to conceal it further when the Invigilator approached. The Committee considered that the facts indicated a probable intention to use the notes on the phone during the exam. It found it particularly significant that the notes were photographed shortly before the exam, and in one case, only about half an hour before the exam started. The most likely explanation was an intention to cheat.
16. In any case, Examination Regulation 6 applied. This stated that
 6. *If you breach exam Regulation 4 [i.e. possess unauthorised materials] and the 'unauthorised materials' are relevant to the syllabus being examined, ... it will be assumed that you intended to use ... 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.

17. There was therefore a presumption that Mr Yuan intended to gain an unfair advantage in the exam. Mr Yuan had done nothing to displace that presumption. The Committee did not find it credible that he could have forgotten that he had the phone with him, given the warnings and announcements made at the exam. **The Committee found Allegation 1(b) proved.**
18. With regard to Allegation 1(c)(i), the Committee was satisfied that Mr Yuan intended to cheat and that his conduct was dishonest. **The Committee found Allegation 1(c)(i) proved.** It did not need to consider Allegation 1(c)(ii).
19. The Committee had no doubt that bringing study notes into an exam with the intention to use them amounted to misconduct. It is amongst the most serious types of misconduct that a student can commit. **The Committee found Allegation 1(d)(i) proved.** It did not need to consider Allegation 1(d)(ii).

SANCTION(S) AND REASONS

20. The Committee first identified any mitigating or aggravating factors. In mitigation, Mr Yuan was of previous good character, although this was of limited importance since he had only been a student of ACCA for about 18 months at the time of the exam. To his credit he had cooperated fully with ACCA's investigation and had made some admissions.
21. An aggravating factor was that there appeared to be an element of pre-planning by taking photographs of notes.
22. The Committee was quite satisfied that a sanction was required in this serious case. It considered the available sanctions in order of seriousness having regard to ACCA's sanctions guidance.
23. It first considered the sanction of admonishment and then reprimand but the guidance made it clear that these were not nearly sufficient to mark the dishonesty in this case.

24. The Committee next considered the sanction of severe reprimand. The guidance states that this sanction 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. Those factors were not present. Mr Yuan consistently denied attempting to cheat and has very limited mitigation.
25. The Committee next considered removal from the student register. The sanctions guidance indicates that this would be a normal sanction in a case of dishonesty. In the Committee's view, Mr Yuan's conduct was incompatible with remaining on the student register. It is a very serious matter. It strikes at the system of study and qualification on which all other regulation depends. **The Committee determined that Mr Yuan should be removed from the student register.** It did not consider that it was necessary to extend the period before which he could re-apply for membership or to make an immediate order.

COSTS AND REASONS

26. ACCA applied for costs totalling £5,453.50.
27. The Committee was satisfied that the proceedings had been properly brought and that ACCA was entitled to a contribution to its costs. As to the amount, Ms Terry pointed out that the costs estimate was based on a full day's hearing whereas this hearing would be concluded more quickly. The Committee determined to reduce the amount allowed for the time of the Case Presenter and the Hearings officer by a total of £840.
28. The Committee was unable to make any reduction on the basis of Mr Yuan's means because he had provided no information. Accordingly, the Committee assessed the costs at £4613.50.

ORDER

29. The Committee **ordered** as follows:
- (a) Mr Yifan Yuan will be removed from the student register.

(b) Mr Yifan Yuan will make a contribution to ACCA's costs of £4613.50.

EFFECTIVE DATE OF ORDER

30. The order will take effect at the expiry of the appeal period.

Mrs Helen Carter-Shaw
Chair
28 September 2021