

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Miss Yuyan Kong
Heard on:	Tuesday, 04 February 2025
Location:	Remotely using Microsoft Teams
Committee:	Ms Carolyn Tetlow (Chair) Mr Trevor Faulkner (Accountant) Mr Roger Woods (Lay)
Legal Adviser:	Mr David Marshall
Persons present and capacity:	Ms Michelle Terry (ACCA Case Presenter) Ms Anna Packowska (Hearings Officer)
Summary:	Removed from the student register
Costs:	£500

1. The Committee heard an allegation of misconduct against Miss Kong. Ms Michelle Terry appeared for ACCA. Miss Kong was not present and not represented.
2. The Committee had a main bundle of papers containing 102 pages, an Additional 1 bundle containing 2 pages, an Additional 2 bundle of 5 pages and a service bundle containing 16 pages.

PROCEEDING IN ABSENCE

3. The Committee was satisfied that Miss Kong 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 7 January 2025 to an email address notified by Miss Kong to ACCA as an address for all correspondence. That was exactly 28 days ago. In the Committee's experience this was ACCA's normal practice although it noted that that practice left no margin for error, particularly where different time zones were involved. Nevertheless it accepted that there had been good service in this case.
4. As to whether to exercise its discretion to proceed in Miss Kong's absence, Miss Kong had been diligent in corresponding with ACCA throughout the process that led to this hearing. She had consistently said that she would not attend a hearing, even after she was advised that any hearing would be conducted virtually and that a translator could be provided. For example, on 9 January 2025 after she had received the notice of hearing she emailed:

'I will not attend this hearing and will not do so in the future. I have done my best to provide materials related to the case. Given that more than four years have passed, many key pieces of evidence are difficult to obtain. I firmly believe that the Committee can make a fair ruling.'
5. She reiterated this by email yesterday and said, 'If the hearing must be held, I agree for the Committee to proceed in my absence.' The Committee was satisfied that she had taken a considered decision not to exercise her right to attend a hearing either today or on any postponed date. It determined to proceed in her absence.

Public/private hearing

6. In her case management form signed on 23 January 2023 Miss Kong asked for all of her hearing to be heard in private. The only reason given was 'This concerns my privacy'.

7. Ms Terry submitted that that was not an adequate reason to justify the Committee from departing from the normal position that hearings must be held in public. The Legal Adviser reminded the Committee of the strong public interest, repeatedly expressed by the courts, that disciplinary hearings should be heard in public unless there were strong reasons for not doing so and then only to the minimum extent necessary. The Committee considered Regulation 11 and concluded that there were no 'particular circumstances' in this case which outweighed the public interest in holding the hearing in public. Some inroads into privacy were inevitable when a person was subject to a serious disciplinary charge. No reasons specific to this case had been put forward and none were identified by the Committee.

ALLEGATION(S)/BRIEF BACKGROUND

8. Miss Kong became a student of ACCA on 18 October 2018. On 8 December 2020 she sat ACCA's taxation exam at the C831/2 Xiamen exam centre in China. The exam commenced at 09:00 and was due to last 3 hours 20 minutes. This was a traditional exam where all the candidates sat in an examination hall under exam conditions, supervised by invigilators. About half way through the exam the supervisor noticed what she thought was suspicious behaviour and investigated. It was not in dispute that as a result of this a document was recovered from Miss Kong. She faced the following allegations:

Allegation 1

(a) During a TX examination on 8 December 2020, Miss Yuyan Kong was in possession of:

(i) Unauthorised materials in the form of notes during the exam, contrary to Examination Regulations 4.

(b) Miss Yuyan Kong intended to use any or all of the items set out in 1(a) above to gain an unfair advantage in the exam.

(c) Miss Yuyan Kong's conduct in respect of 1(b) above:

(i) was dishonest, in that Miss Yuyan Kong intended to gain an unfair advantage in the exam; in the alternative

(ii) demonstrated a lack of integrity.

(d) By reason of her conduct, Miss Yuyan Kong is:

(i) Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the matters set out at 1(a) to 1(c) above; or

(ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of 1(a) above.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

9. ACCA did not call any oral evidence. It relied on statements made on the day by the supervisor, four invigilators and Miss Kong herself and other documents obtained during the investigation such as the Examiner's irregular script report.
10. The Committee had a copy of the document which was described as, and appeared to be, a long narrow strip of paper with densely hand-written notes on both sides. The length was about that of an A4 sheet, but the width was only about a third of A4. Even to a lay person it was obvious that it included notes on taxation, with references to VAT and inheritance tax. The irregular script report said its contents were relevant to the syllabus of the taxation exam. Its form suggested to the Committee that it was designed for concealment. Essentially it appeared to be a crib sheet.
11. Miss Kong did not dispute that the document was designed for cheating. Her defence, which she had put forward consistently since the day of the exam, was that she had not created it, did not intend to use it and had not used it. She said that during the course of the exam she had found it when she moved or adjusted the computer on her desk. She was examining the document to see what it was when the invigilator challenged her. She claimed not to know the contents of the document. She said that in hindsight she realised that she should immediately have notified the invigilators that she had found this document instead of examining it herself. She recognised that her behaviour was 'inappropriate' and apologised for this. However, she denied dishonesty.
12. Miss Kong did not produce any evidence to support her version of events, but the Committee accepted that it would have been very difficult for her to do so.

Allegation 1(a) 'During a TX examination on 8 December 2020, Miss Yuyan Kong was in possession of: (i) Unauthorised materials in the form of notes during the exam, contrary to Examination Regulations 4.

13. Examination regulation 4 defined 'unauthorised materials' as 'any written materials except those expressly permitted in the [examination] guidelines'. The examination guidelines said:

What can you take to your desk?

- *Examination attendance docket*
 - *Official means of photographic identification*
 - *Rulers, pens, pencils and an eraser*
 - *Geometrical instruments*
 - *A noiseless, cordless pocket calculator which may be programmable, but which must not have a printout or graphic/word display facility in any language*
 - *A small bottle of water or soft drink, all labels removed. No other drinks or food are permitted.*
 - *Black ballpoint pen.*
14. Clearly the crib sheet did not fall within this list and therefore was an unauthorised item.
15. The SCRS 1B report produced by the supervisor on the day of the exam set out that she (the supervisor) approached Miss Kong while she was studying the document. Miss Kong then held the document tightly in her hand, apparently to hide it. She refused to hand it over. The supervisor then called for help from one of the invigilators who forcibly removed it from Miss Kong's clenched fist. Miss Kong did not dispute that she was holding and reading the document.
16. The Committee concluded that Miss Kong was therefore 'in possession' of the note. **The Committee found Allegation 1(a) proved.**

Allegation 1(b) 'Miss Yuyan Kong intended to use any or all of the items set out in 1(a) above to gain an unfair advantage in the exam'

17. This was the central allegation in the hearing. Essentially it accused Miss Kong of cheating or intending to cheat, which is one of the most serious types of professional misconduct relevant to a student. The Committee recognised that with such a serious allegation it should scrutinise the evidence with great care.
18. The first question was whether this was Miss Kong's document. The Supervisor stated in a response to ACCA dated 27 May 2023:

'I am sure that all the desks were checked before the exam for notes left by previous student sitting exams, my team and I strictly follow the requirements on invigilator duties handbook'

19. This response was made a significant time after the exam, but the Committee found it credible because checking the desks was one of the key things the team was required to do. The supervisor also stated that the candidates' desks are allotted on a random, first come first served, basis so it would have been impossible for another student to have planned to place their own crib sheet in the hall before the exam for their own use later. On the face of it ACCA's evidence established that it must have been Miss Kong who brought the document in. The Committee considered Miss Kong's version of events carefully to see if this cast doubt on ACCA's case. This was a morning exam. It was not credible that by pure chance another student intending to cheat had brought in a crib sheet relevant to the taxation exam on the previous day and then left it behind and that the examination team had failed to detect it when preparing the room for Miss Kong's exam. When challenged, Miss Kong had resisted the Invigilator's attempt to remove the document from her clenched fist. This behaviour was inconsistent with her case that she had found it and was examining it to establish what it was. The Committee concluded that on the balance of probabilities Miss Kong had brought the document in. The document was clearly designed as a crib sheet and the only reason for bringing it would be to gain an unfair advantage in the exam.
20. The Committee came to this conclusion without relying on Examination Regulation 6 but if it had been in doubt, that Regulation was conclusive:

- 6. If you breach exam regulation 4 and the 'unauthorised materials' are relevant to the syllabus being examined, ... 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 ... to gain an unfair advantage in the exam.*
21. As already stated, the crib sheet was relevant to the syllabus. Miss Kong failed to prove that she did not intend to cheat. The Committee rejected her evidence. **The Committee found Allegation 1(b) proved.**

Allegation 1(c) Miss Yuyan Kong's conduct in respect of 1(b) above: (i) was dishonest, in that Miss Yuyan Kong intended to gain an unfair advantage in the exam; in the alternative ...

22. The facts so far found proved show that Miss Kong cheated or attempted to cheat or intended to cheat in the exam by using a pre-prepared crib sheet. That was clearly dishonest by the standards of ordinary decent people. **The Committee found Allegation 1(c)(i) proved.** It therefore did not need to consider the alternative allegation (ii).

Allegation 1(d) By reason of her conduct, Miss Yuyan Kong is: (i) Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the matters set out at 1(a) to 1(c) above; or

23. The Committee had no doubt that exam cheating constitutes misconduct. As already stated, it is one of the most serious types of professional misconduct relevant to a student. **The Committee found Allegation 1(d)(i) established.** It therefore did not need to consider the alternative in (ii).

SANCTION(S) AND REASONS

24. The Committee considered what sanction, if any, to impose in light of its findings, having regard to ACCA's Guidance for Disciplinary Sanctions (2024). It first sought to identify mitigating and aggravating factors.
25. Miss Kong had no previous disciplinary findings against her in the two years that she had been a registered student prior to the exam in question. She had fully cooperated with the investigation. These were mitigating factors, although

not strong ones. Miss Kong had not demonstrated insight or remorse and denied that she had committed any serious misconduct.

26. There were aggravating factors. The production of the crib sheet showed premeditation and planning. Miss Kong attempted to conceal her misconduct by physically hiding the crib sheet and refusing to hand it over. The misconduct was carried out for her own personal benefit.
27. Miss Kong had not shown any insight into the seriousness of what she had done or any remorse. She continued to deny dishonesty or an intention to cheat throughout the case.
28. The Committee was satisfied that the misconduct required a sanction. The Committee considered the sanctions of admonishment and reprimand but concluded that these would be wholly inadequate to mark the seriousness of Miss Kong's actions. The Committee next considered the sanction of severe reprimand. The Guidance says that this can 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.

29. This clearly did not apply to Miss Kong's case where there was no indication that she had any understanding of the importance of complying with exam regulations. Few if any of the suggested factors in the Sanctions Guidance were present.
30. The next relevant sanction was removal from the student register. The Committee was satisfied that Miss Kong's conduct was incompatible with remaining registered as a student of ACCA and that this was the minimum sanction it could impose.
31. Miss Kong will be entitled to apply for readmission after one year. The Committee did not find it necessary to extend this period. If Miss Kong does apply she will have to persuade the Admissions and Licensing Committee that she has learnt the relevant lessons, has taken steps to ensure that there will be no repetition, and is a fit and proper person to be registered with ACCA.

COSTS AND REASONS

32. Ms Terry applied for costs totalling £5,635.
33. The Committee was satisfied that the proceedings had been properly brought and that ACCA was entitled in principle to a contribution to its costs. The Committee was satisfied that the time spent, and the rates claimed were reasonable.
34. Miss Kong provided a statement of means. This stated that she received a salary [PRIVATE] per month and had outgoings of [PRIVATE] per month. It stated that she had no capital assets and that her "income is meagre [sic]". In the covering email she said, 'the amount is estimated and details cannot be provided'. Nevertheless the Committee accepted it as a general indication that her means were modest by UK standards. The Committee also took into account that Miss Kong had expressed extreme concern throughout the process about the potential liability for costs and had enquired as to whether there was any process which would avoid the need for a hearing. However, ACCA had made it clear that even full admissions would still require a hearing.
35. The Committee was satisfied that to order costs in a sum anywhere near what had been applied for would cause severe financial hardship. It determined to order a contribution to costs of £500 which would still be a significant burden on Miss Kong.

EFFECTIVE DATE OF ORDER

36. Ms Terry did not apply for the order made to take immediate effect. The Committee did not consider that there would be a risk to the public sufficient to justify an immediate order. The order will therefore take effect at the normal time, after the expiry of the appeal period.

ORDER

37. The Committee **ordered** as follows:
 - (a) Miss Yuyan Kong shall be removed from the student register
 - (b) Miss Yuyan Kong shall make a contribution to ACCA's costs of £500.

**Ms Carolyn Tetlow
Chair
04 February 2025**