

## HEARING

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

#### REASONS FOR DECISION

**In the matter of:** Mr Yuheng Zhu

**Heard on:** Tuesday, 12 March 2019

**Location:** ACCA Head Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU

**Committee:** Mrs Kathryn Douglas (Chairman), Mr Martin Davis (Accountant), Ms Helen Kitchen (Lay)

**Legal Adviser:** Mr Andrew Granville Stafford

#### Persons present

**and capacity:** Mr Yuheng Zhu (Student)  
Ms Min Xu (Interpreter)  
Mr Benjamin Jowett (ACCA Case Presenter)  
Mr Richard Lorkin (Hearings Officer)

**Observers:** None

**Summary** **Allegations 1(a), 1(b), 1(c)(i), 1(c)(ii) and 1(d)(i) found proved**  
**Removed from the student register**  
**Disqualified from the F5 examination on 6 June 2018**  
**Costs of £400 awarded against Mr Zhu**

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## **INTRODUCTION AND PRELIMINARY MATTERS**

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Mr Yuheng Zhu.
2. The Committee had before it a bundle of papers (pages A to M and 1 to 63), two additional bundles (pages 64 to 92 and 97 to 109) and a service bundle (pages 1 to 45).
3. Mr Zhu attended the hearing by telephone, and was assisted by a Mandarin interpreter.
4. At the outset of the hearing, Mr Zhu applied for his case to be heard in private on the basis that he regarded this as a private matter. The application was opposed by Mr Jowett on behalf of ACCA.
5. Regulation 11(1)(a) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ('CDR') gives the Committee a discretion to hear all or part of a case in private, if it satisfied that the particular circumstances of the case outweigh the public interest in holding the hearing in public. In the Committee's view, Mr Zhu had not provided any reason which outweighed the public interest in an open hearing or which would justify holding the hearing in private. The Committee refused his application.

## **ALLEGATIONS AND BRIEF BACKGROUND**

6. The allegations against Mr Zhu were as follows.

### Allegation 1

- (a) During an F5 examination on 6 June 2018, Mr Yuheng Zhu was in possession of unauthorised materials which he had at his exam desk, contrary to Examination Regulations 4 and/or 5.
- (b) Mr Yuheng Zhu intended to use any or all of the materials set out at 1(a) above to gain an unfair advantage.

(c) Mr Yuheng Zhu's conduct above was:

- (i) Dishonest, in that Mr Yuheng Zhu intended to use any or all of the unauthorised materials which he had at his exam desk to gain an unfair advantage in the exam;
- (ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2018).

(d) By reason of his conduct, Mr Yuheng Zhu 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.

7. Mr Zhu is a student member of ACCA, having been admitted to student membership on 22 May 2017, and is resident in China. On 6 June 2018, Mr Zhu attended an examination centre in China to sit the F5 examination.

8. Prior to examinations, all candidates receive a copy of ACCA's Examination Regulations and Examination Guidelines. These include the following regulations:

#### Examination Regulation 4

You are not allowed to take to your exam desk any books, notes or other materials (except those outlined in the guidelines below). These are known as 'unauthorised materials'.

#### Examination Regulation 5

You are not allowed to possess, use, or intend/attempt to use, any unauthorised materials while the exam is in progress (whether at your desk or otherwise).

#### Examination Regulation 7(a)

If you breach exam regulation 4 and/or 5 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 intend to use the unauthorised materials to gain an unfair advantage in the exam.

9. Before all examinations, the invigilator's announcements draw candidates' attention to these regulations and warn them that if they are found in possession of any unauthorised material, their conduct will be reported to ACCA.
10. ACCA's case was that, about one-and-a-half hours into the examination, an invigilator saw Mr Zhu putting a piece of paper into the drawer of the desk he was sitting at. The invigilator, Ms A, gave the following account of the incident in an SCRS1B form:

"When I was patrolling the test room I found the student was putting a piece of paper back to the drawer of his testing desk. I asked the student to give the paper to me and told the supervisor."
11. Ms A seized the notes which consisted of one A4 size page of handwritten notes in English and Mandarin. Ms A stated that she asked Mr Zhu "What is it?" and he said the piece of paper was not his personal belongings.
12. Mr Zhu was asked to complete a statement in form SCRS2B on the same day. He said that he had used the notes to review before the exam, but had taken it into the exam room. He denied using the notes during the exam. He stated:

"I forgot it in my package."

"It's used to review before the test but I took it in room."

"I put it in desk and I touch it when I use mouse."

"I didn't know it in my package."
13. ACCA relied on a report by an examiner, Mr C, who confirmed that the notes were relevant to the syllabus, and also to the exam that Mr Zhu was sitting. He was not able to say whether or not Mr Zhu had used the notes to answer any of the questions in the paper.
14. Mr Zhu gave the following accounts in emails to ACCA's investigation department.

Email dated 13 July 2018: "I participated F5 performance management on 9.00 . . . Before this day I finished F7 exam in 11.00pm. I wanted to review my F5 notes which I clear up on 5 papers on the way to hotel. But when I arrived at hotel, I put the paper which I was seeing in my trousers pocket. I forgot that on next day morning. And I went to exam after getting up. When I sit on my seat I find that, but I didn't know how to do, I put it in my drawer. I was so nervous that I cant claim down. I often touced it when I use my mouse in my drawer. And it was found by invigilator finally. I feel so sorry about that but I was not really deliberate to do this. I promise I didn't want to use it to do something opportunistic. The paper which is just one of notes in my five notes paper can prove my carelessness not intention. I hope ACCA can forgive my carelessness and give me a chance. Please don't cancel my register because I really love it very much and I still hope to study. I can accept any other punish such as cancel my result of F5 examination. I promise I will be more careful in the following study."

Email dated 1 August 2018: "The day before the F5 examination, I took part in F7 examination. When the F7 examination finished, it had been 11.00p.m. in china because of the technology problem of our computers. So I reviewed notes on the way to the hotel which I used it to collect important knowledge points. There are five papers, the unauthorized material is one of them, I will show the others attached the letter. When I saw the forth paper (it is the unauthorized material), I arrived at the hotel, so I take it in my pocket. The following day, I got up very early to attend F5 examination and I forgot this paper in my pocket. When I sat on my seat, I found this paper in my pocket. I am so nervous about that. Because I know it is not allowed. And I was afraid of it dropped out, I took it in my computer desk drawer. And I didn't use it during the examination. But the mouse in the drawer, when I moved the mouse, this paper dropped out, I took it back to my drawer, and these were found by the invigilator. She asked me take it to her, I'm so nervous and afraid. I hope I can be forgave. I promise I am not deliberate to use this paper to get unfair advantages. I am so sorry about my careless actions. Please give me a chance. I don't want to lose qualification to study ACCA."

Email dated 8 October 2018: "I admit that I take the unauthorized material to the examination. But I am really not deliberate to do that. If I want to use it to get unfair advantages, I can take a smaller paper instead of this A4 paper which is not easy to be found, and I also can take all my notes to the examination. The fact is that I forgot it in my pocket before the day and I was afraid about the paper throwing out of my pocket and then was found, because I know it is prohibited in any examination, so I put it into my desk and hope nobody knows. But it was found at last when I move the mouse in the drawer, I was so nervous to face the examiner and said 'it was not mine'. I hope examiner can not blame on me. However, I realize that I cannot lie, because it is important for accountant to be honest. Finally I admit it was mine. I had told all the truth about me and the case. I sent you the other 4 notes before. I prepared examination sufficiently, I didn't have to use one of them to get unfair advantages. I spent much time and money studying ACCA and I still study F8 and F9. Because I hope I can get the certification to find a good job. It is so important for me that my future depend on it, So I am serious about ACCA and the examination and I won't do this to lose the qualification. It is all the meaning of my colleague life. I really don't want to be removed due to my carelessness. I promise I will be more careful. I will be grateful if I can be forgiven."

### **DECISIONS ON ALLEGATIONS AND REASONS**

15. At the outset of the hearing, Mr Zhu admitted Allegation 1(a) and the Committee found this allegation proved by admission. The Committee considered the remaining allegations.
16. The Committee considered the documents before it, the oral evidence of Mr Zhu, the submissions of both parties 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. However, where a student is found to be in possession of unauthorised material during an exam the burden is reversed and the student is presumed to have intended to use the material to gain an unfair advantage unless the contrary is proved (Exam Regulation 7(a)).
17. The Committee first considered Allegation 1(b). The key issue in respect of this allegation was whether Mr Zhu intended to use the notes to gain an

unfair advantage. As Mr Zhu accepted that the notes were unauthorised materials for the purpose of the Exam Regulations, and that they were relevant to the syllabus being examined, the burden was on him to satisfy the Committee that he did not intend to use the notes in the examination.

18. Mr Zhu's account was that the notes were in his trouser pocket, but had forgotten about them. He had therefore brought the notes into the examination room accidentally. During the examination, he noticed the paper in his pocket and realised it was his revision materials. He thought it might drop from his pocket, and the invigilator would see it, so he took it and put it in the drawer of the table he was sitting at. The exam was a computer-based exam. He described the 'drawer' as being a hollow shelf under the main desk on which he could use the mouse.
19. In cross examination, Mr Zhu said it was ten to twenty minutes into the exam when he found he had the notes on him. He explained that when he was sitting down his legs were moving and he felt something in his pocket. He thought he had put everything in his coat pocket. However, he had put this note in his trouser pocket after the exam the previous day and forgot it was there. When he discovered it he panicked. He was scared the invigilator would find it. He also explained that he has a habit of his legs shaking when sitting down. That would have made it easy for the paper to drop out, so he put it in the drawer.
20. He said the cord of the mouse he was using touched the paper and caused it to move part-way out of the draw, and he then put it back into the drawer. It was put to him that the invigilator said he was putting the notes back into the drawer when she discovered them. He did not dispute this account.
21. Mr Zhu accepted in his evidence to the Committee that when the notes were found by Ms A, he initially denied that the piece of paper belonged to him.
22. Mr Zhu told the Committee that if he had intended to gain an unfair advantage he would have brought in small pieces of paper. He said if he had tried to look at a piece of paper of this size others around him would have been alerted. He said the page that was seized was only one page of his revision materials, and on their own would not have enabled him to pass the examination. In any event, he was confident of his knowledge of the paper, but even if he had failed he would have been able to re-take the

exam. He said he did not immediately tell the invigilator what had happened because he thought this might affect his result.

23. He stressed that he is a person of good moral character, and he produced certificates from institutions he had attended. He denied that he had either taken the note into the exam intending to use it or that, once he realised it was in his pocket during the course of the exam, he had formed an intention to use it.
24. The Committee noted that Mr Zhu had sat at least four previous ACCA exams and, as he accepted in evidence, he was familiar with the Examination Regulations.
25. The Committee considered the following points were significant. Even on Mr Zhu's own evidence, having discovered the notes in his pocket he tried to hide them from the invigilator. Further, when first challenged by the invigilator his response was to lie to her by denying ownership of the notes.
26. The Committee rejected Mr Zhu's account. His actions in hiding the notes from the invigilator and putting them in a place where he could access them during the examination were, in the Committee's view, inconsistent with his evidence that he did not intend to use them.
27. ACCA put its case on the basis that either Mr Zhu deliberately brought the notes into the exam intending to use them or, if he had not realised they were in his pocket until after the exam started, he formed the intention to use them once he was aware of them. It was not necessary for the Committee to decide between these two possibilities. It was satisfied that, at the very latest when Mr Zhu realised he had notes on him during the examination, he decided he would use them to assist in answering the examination questions.
28. The Committee therefore found Allegation 1(b) proved on the basis it was satisfied Mr Zhu had the intention during the examination to use the notes in question.
29. Having made this finding, the Committee was in no doubt that Mr Zhu's conduct was dishonest and amounted to a breach of the Fundamental Principle of Integrity. It therefore found Allegations 1(c)(i) and (ii) proved.

30. There is no doubt that attempting to cheat in exams is discreditable behaviour and amounts to misconduct. The Committee therefore found Allegation 1(d)(i) proved. As Allegation 1(d)(ii) was an alternative, there was no need for the Committee to consider Allegation 1(d)(ii)

### **SANCTION AND REASONS**

31. 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.
32. The Committee took into account that no previous findings had been made against Mr Zhu. Although he had denied attempting to cheat, he had apologised for his failings. He had co-operated with the investigation and engaged with the proceedings. He clearly understood the seriousness of the allegations he faced, and has no doubt learned a lesson from them.
33. The Committee also took into account the certificates he produced which testify as to his hard work and achievement at university.
34. Having found that Mr Zhu'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.
35. Mr Zhu's actions were a very serious departure from proper and acceptable standards, although the allegations themselves did not require the Committee to find it was a pre-planned attempt to cheat. Nonetheless there is obvious potential for harm to the public interest, the interests of the Association and the profession where students cheat and as a result pass exams that they should not have passed. Therefore it was, in the Committee's view, inappropriate to admonish or reprimand Mr Zhu.
36. The Committee considered, in light of the guidance in the GDS, whether it would be appropriate to severely reprimand Mr Zhu. Given that the misconduct was intentional and involved potential for harm, and given his limited insight and remorse, a severe reprimand was not appropriate.

37. Misconduct in relation to examinations which involves dishonesty is bound to be regarded by any Committee as very serious. In this case, Mr Zhu's misconduct was compounded by his initial denial when confronted by the invigilator.
38. Mr Zhu's actions were fundamentally incompatible with being a student member of a professional association. They constituted a serious departure from relevant standards. The Committee did not feel that any order which allowed Mr Zhu to retain his student membership of ACCA would be proportionate.
39. Therefore, the Committee made an order under regulation 13(3)(c) of the Disciplinary Regulations removing Mr Zhu from the student register.
40. Pursuant to CDR 13(4)(f), the Committee ordered that Mr Zhu be disqualified from the F5 examination on 6 June 2018.
41. The Committee did not consider that the public interest in this case required it to additionally make an order restricting Mr Zhu's right to apply for readmission beyond the normal minimum period for re-application. Mr Zhu stated that this experience had taught him a lesson about honesty, and the Committee believed that it had.

#### **COSTS AND REASONS**

42. ACCA applied for costs against Mr Zhu in the sum of £6,463.22. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing (additional bundle pages 93 to 96).
43. The Committee accepted that in principle an award of costs should be made in ACCA's favour, and accepted that the costs sought were reasonable in amount. However, Mr Zhu is a student and has no independent income and therefore the award should reflect his very limited means.
44. In the circumstances, the Committee ordered Mr Zhu to pay ACCA's costs in the sum of £400.

## **EFFECTIVE DATE OF ORDER**

45. 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 Mr Zhu gives notice of appeal in accordance with the Appeal Regulations prior to that.

**Mrs Kathryn Douglas**  
**Chairman**  
**12 March 2019**