



**HEARING
DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF
CHARTERED CERTIFIED ACCOUNTANTS
REASONS FOR DECISION**

In the matter of: Miss Hanxue Zheng

Heard on: Thursday, 21 May 2020

Location: Remote link via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU

Committee: Ms Wendy Yeadon (Chair)
Ms Lorna Jacobs (Lay)
Mr Ryan Moore (Accountant)

Legal adviser: Mr Robin Havard

**Persons present
and capacity:** Mr Phillip Law (ACCA Case presenter)
Miss Geraldine Murray (Hearings Officer)
Miss Anna Packowska (Hearings Officer)

Observers: None

Summary: Removal from the student register

Costs: £5,000.00

PRELIMINARY APPLICATIONS

SERVICE OF PAPERS

1. The Committee had considered the following documents: a hearing bundle, (pages 1 to 65) and a service bundle, (pages 1 to 18).
2. Having considered the letter dated 17 April 2020 sent by ACCA by email to Miss Zheng, the Committee was satisfied that it had been sent to her registered email address in accordance with Regulation 22 of the Complaints and Disciplinary Regulations 2014 as amended ("CDR"). The Committee had also noted that the email had been delivered successfully. The email also contained the necessary information in accordance with CDR10. Consequently, the Committee decided that Miss Zheng had been properly served with proceedings.

PROCEEDING IN ABSENCE

3. On 11 May 2020, in the absence of any response from Miss Zheng to the email of 17 April 2020, ACCA sent another email to her at the same email address asking her to respond and reminding her of the date of hearing. Miss Zheng did not reply.
4. On 15 May 2020, the Hearings Officer of ACCA sent a further email to Miss Zheng containing the date of hearing and with a link to the documents relating to these proceedings.
5. ACCA had received confirmation that these emails had been delivered successfully.
6. The Committee was satisfied that ACCA had done everything possible to engage Miss Zheng in the proceedings, but she clearly had no intention of doing so. The Committee noted that the emails had been sent to the same email address to which ACCA had sent previous emails in August, September and November 2019, and February and March 2020.
7. The Committee found, on the balance of probabilities, that Miss Zheng had received the emails from ACCA informing her of the hearing and giving her access to the documents containing the evidence on which ACCA relied in support of the allegations. The Committee concluded that Miss Zheng had voluntarily absented herself from the hearing which she could have joined by telephone or video link if it was not possible for her to attend in person. She had, therefore, waived her right to attend.

8. The Committee was also satisfied that, taking account of the seriousness of the allegations, it was in the public interest to proceed. The Committee did not consider that any benefit would be derived in adjourning the hearing and no such application had been made. Finally, the Committee considered that it was in a position to reach proper findings of fact on the written evidence presented to it by both ACCA and Miss Zheng.
9. The Committee ordered that the hearing should proceed in the absence of Miss Zheng.

AMENDMENT

10. Mr Law applied to amend allegation 1(c)(i) by adding the word "or" to the end of the allegation on the basis that allegations 1(c)(i) and (ii) were in the alternative.
11. The Committee granted the application. It considered that such an amendment was appropriate and would not cause prejudice to Miss Zheng.

ALLEGATIONS

Allegation 1

- (a) During a Financial Reporting examination on 06 June 2019, Miss Hanxue Zheng was in possession of:
 - (i) Unauthorised materials in the form of notes whilst at her exam desk, contrary to Examination Regulations 4 and/or 5.
- (b) Miss Hanxue Zheng intended to use any or all of the items set out at 1(a) above to gain an unfair advantage, contrary to Examination Regulation 7a;
- (c) Miss Hanxue Zheng's conduct in respect of 1(b) above was:
 - (i) Dishonest, in that Miss Hanxue Zheng intended to use any or all of the unauthorised materials which she had at her exam desk to gain an unfair advantage, or
 - (ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2019).
- (d) By reason of her conduct, Miss Hanxue Zheng 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/ALLEGATIONS AND REASONS

Allegation 1(a)(i)

- 12. Miss Zheng had not formally responded to the allegations contained in the notice of proceedings. Therefore, even though it appeared from her responses, to which reference is made below, that she admitted Allegation 1(a), the Committee had approached the proceedings as if all allegations were denied.
- 13. On the basis of the documentary evidence contained in the bundle, and having listened to the submissions of Mr Law, the Committee made the following findings of fact.
- 14. On 27 November 2018, Miss Zheng first registered as an ACCA student and had subsequently passed the FA, AB and MA CBE ACCA examinations.
- 15. On 06 June 2019, Miss Zheng attended the C803/1 Chengdu exam centre in order to sit the Financial Reporting SCBE examination. This was the first occasion on which she had attempted the exam, which commenced at 9.00am and was due to last for 3 hours 20 minutes.
- 16. All candidates for ACCA examinations were made aware of the Examination Regulations in the following way.
- 17. Prior to an examination, all candidates received an attendance docket which contains the ACCA guidelines and regulations. Before an examination commenced, the Supervisor would draw candidates' attention to the regulations and guidelines outlined in the attendance docket. Point 6 was a clear instruction to all candidates to remove all unauthorised materials from their desks.
- 18. Miss Zheng had signed to confirm that she had received notification of the guidelines and regulations.

19. The Financial Reporting SCBE exam on 06 June 2019 having commenced, the exam centre's Invigilator found what she considered to be unauthorised material in Miss Zheng's possession. In her SCRS1B form, which she completed on the day of the exam, the invigilator recorded that the unauthorised material was found in the student's possession at "10.38." Indeed, the invigilator stated that she had found the unauthorised material on Miss Zheng's desk and that Miss Zheng had made no attempt to hide the material.
20. The Invigilator stated that there had been no communication between her and Miss Zheng, who did not argue with the Invigilator, nor did she try to stop the Invigilator from removing the unauthorised material. The Invigilator then handed the material to the Supervisor.
21. In turn, the Supervisor completed a SCRS1B form. The form contained a record of the account which, according to the Supervisor, had been provided to her by the Invigilator and also a description of the unauthorised material. The Supervisor described the unauthorised material as, "3 pages (double sided) of notes, printed and scribed. Palm size (sic)."
22. In the Examiner's irregular script report dated 02 July 2019, the Examiner confirmed that the material was relevant to the syllabus and was relevant to the examination.
23. On 06 June 2019, Miss Zheng completed an SCRS2B form in relation to the incident and the unauthorised material. She confirmed that the unauthorised material consisted of "three papers." and replied "Yes" in response to whether she was in possession of unauthorised materials.
24. Miss Zheng accepted, and the Committee found, on the basis of her admission and the evidence of the Examiner, that the unauthorised materials were relevant to the syllabus. Indeed, Miss Zheng confirmed, "This is my review material. It has some methods about how to write statement analysis."
25. On 16 July 2018, Miss Zheng provided a response to Exams Conduct, giving an explanation for the unauthorised materials that were in her possession. In her response, she apologised and provided her explanation for bringing the unauthorised material in to the exam. She confirmed, "There is no denying that this is a violation of the exam rules..."

26. On the basis of the above facts, the Committee was satisfied that Miss Zheng was in possession of unauthorised materials in the form of notes whilst at her exam desk, contrary to Examination Regulations 4 and 5.
27. The Committee, therefore, found the facts of Allegation 1(a)(i) proved.

Allegation 1(b)

28. ACCA had relied on the evidence of the invigilator and the supervisor when maintaining that Miss Zheng had used, or intended to use, the unauthorised material in the course of the exam in order to gain an unfair advantage.
29. In the form SCRS1B, in answer to the question whether Miss Zheng had used the unauthorised material to cheat, the invigilator stated, *"It is likely because the unauthorised materials placed right on the student's desk without anything to cover them, which was a strong indication of the materials being used by the student, but the notes were folded as well so I am not 100% sure."*
30. As for the Supervisor, when asked in the SCRS1B form whether the unauthorised material had been used, she stated, *"I don't know. Notes confiscated by invigilator and handed to me"* but later in the form, the Supervisor said that, whilst she herself had not witnessed Miss Zheng's behaviour, *"at 10.38, invigilator [.....] brought confiscated notes and cdd's docket to me, saying cdd put the notes on her desk and was looking at them whilst typing in answers."*
31. As for Miss Zheng, whilst the Committee had not had the benefit of listening to her account at the hearing, it had considered carefully what she had said in the form she completed at the time of her exam and in her response dated 16 July 2019.
32. The following information provided by Miss Zheng had been drawn from her form SCRS2B.
33. When asked to explain the purpose for which she had the unauthorised materials in her possession, Miss Zheng stated, *"Prit it out so I can study it any time. I think its an effective way to review. I used it on my way to the exam room (sic)."*
34. In response to being asked whether she used the unauthorised materials, Miss Zheng wrote, *"No. I just forgot to take it in my bag so I put it in the corner of the table and (sic)."*

35. When asked to confirm whether she attempted to use the unauthorised materials that were found in her possession, Miss Zheng has confirmed, *"No. I didn't want to copy it, so I put it in the corner of the table instead of hiding it."*
36. When asked whether she intended to use the unauthorised materials, Miss Zheng has stated, *"No I planned to hand it over to the invigilator but I didn't think there was enough time in the exam so I planned to do the questions first."*
37. When asked whether she intended to gain an unfair advantage from the unauthorised materials, Miss Zheng has stated, *"No."*
38. Overleaf, Miss Zheng concluded her SCRS2B form by saying, *"I apologise for my mistake. But I really doesn't use the materials. If im going to cheat im not going to put the material on the table. So please give me a chance to prove myself. I still wrote out the formula after the data came in. Statement analysis questions in the back to calculate time I did not start to write related to pics (sic)."*
39. Miss Zheng had signed the form confirming that the facts as specified were a true reflection of the incident.
40. On 04 July 2019, ACCA's Exam's Conduct Department wrote to Miss Zheng in relation to the irregularity that had occurred at the exam centre and requested a response from her.
41. On 16 July 2018, Miss Zheng provided a response to Exams Conduct, giving an explanation of the unauthorised materials that were in her possession. In her email, she stated, *"I am sorry for what happened one month ago. A month has passed, I have been sad about my careless behaviour, but I can be firm that I did not cheat. I hope the committee can give me a chance to correct my mistakes It is really my negligence that caused the misunderstanding."*

42. Miss Zheng continued with her explanation as follows, *"Here's why I brought the materials into the examination room: Since I wanted to review at anytime and anywhere, I printed a lot of examination materials on a small size of paper and took some examination materials with me on the way to the exam for final review. But because of the examination nervous, habitually put the material in the trouser pocket inside, the examination way discovered to forget to put in the examination room outside the material, in order to be misunderstood cheats to out the material directly on the table plans to give to the informant teacher, but because is doing that way of thinking is half, plans to finish first to hand in again. At this time, I was found by the invigilator. The teacher didn't say anything, so I continued to answer the questions. I didn't worry about being punished because I didn't think about cheating. I didn't check my pockets carefully before the exam, and I found that I didn't have over the review materials to the teacher in time after I took them with me. There is no denying that this is a violation of the exam rules, but I want to declare that I really have no intention to cheat and I didn't use the materials in the exam.....(sic)"*
43. On 14 August 2019, ACCA's Investigation Department, via the Investigations Officer, wrote to Miss Zheng to advise her of the complaint which had been received and requested her comments, but she failed to provide any further response.
44. The Committee had taken into consideration all that had been said by those who had provided written evidence on behalf of ACCA and also what had been said by Miss Zheng. It had examined copies of the actual notes which Miss Zheng had taken into the exam. The material comprised of small handwritten notes as well as some typed text. The Committee had already found that the material was relevant to the exam being attempted by Miss Zheng.
45. The Committee was concerned that the only direct evidence of Miss Zheng using the material came from the Supervisor who had stated that, when the Invigilator had handed the material to her, the Invigilator had said to her, *"cdd put the notes on her desk and was looking at them whilst typing in answers."*
46. However, as stated at paragraph 28 in the form completed by the Invigilator, she stated that, *"It is likely because the unauthorised materials placed right on the student's desk without anything to cover them, which was a strong indication of the materials being used by the student, but the notes were folded as well so I am not 100% sure."* This suggested that the Invigilator had not seen Miss Zheng looking at the unauthorised material when typing her answers.
47. However, the Committee reminded itself of the terms of regulation 7(a) of the Examination Regulations which provided as follows:

"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."

48. The Committee was not satisfied that there was sufficient evidence to establish that Miss Zheng actually used the unauthorised material in order to gain an unfair advantage in the exam. Nevertheless, the allegation related to an intention to use the material to gain an unfair advantage.
49. The Committee found that Miss Zheng had not proved, such that the Committee was satisfied on the balance of probabilities, that she did not intend to use the unauthorised material to gain an unfair advantage.
50. The Committee had found, and indeed it was not disputed, that the material had been located on the top of Miss Zheng's desk. The exam had started at 09.00 am and the material had been observed by the Invigilator on Miss Zheng's desk over one and a half hours later at 10.38 am.
51. The material was in the form of small handwritten notes and typed narrative of material which was directly relevant to the exam she was attempting to pass. All Miss Zheng had put forward as a defence initially was that it was an oversight, that she had forgotten to put it in her bag, that she had not had the time to hand the material to the invigilator and that she planned to answer the questions first. The Committee did not find such an explanation to be plausible.
52. In her explanation in her email of 16 July 2018, she stated that she "habitually" put material in her trouser pocket, as opposed to her bag and then said, "*I didn't check my pockets carefully before the exam, and I found that I didn't have over the review materials to the teacher in time after I took them with me*" (sic) which, again, the Committee found implausible. If Miss Zheng had not intended to use the material, she could have handed it to the Invigilator at any stage in the course of the exam. It also did not explain why, in the course of the exam, Miss Zheng had decided to take the notes out of her pocket.
53. On this basis, the Committee found the facts of Allegation 1(b) proved.

Allegation 1(c)(i)

54. The Committee relied upon its findings of fact in respect of Allegations 1(a) and (b). Miss Zheng knew that she was not permitted to take the notes into the examination with her. The Committee had found that she intended to use the material in order to gain an unfair advantage over those students who were sitting the exam without the assistance of such material.
55. The Committee was satisfied that, by the standards of ordinary decent people, such conduct was dishonest.
56. The Committee therefore found Allegation 1(c)(i) proved

Allegation 1(c)(ii)

57. As the Committee had found Allegation 1(c)(i) proved, there was no requirement to make a separate finding in respect of this allegation.

Allegation 1(d)(i)

58. The Committee relied upon its findings of fact as set out above.
59. Taking account of its findings that Miss Zheng had acted dishonestly, the Committee was satisfied that Miss Zheng was guilty of misconduct in that such conduct could properly be described as deplorable. In the Committee's judgement, it brought discredit to Miss Zheng, the Association and the accountancy profession.
60. The Committee, therefore, found Allegation 1(d)(i) proved.

Allegation 1(d)(ii)

61. As the Committee had found Allegation 1(d)(i) proved, there was no requirement to make a separate finding in respect of this allegation.

SANCTIONS AND REASONS

62. The Committee considered what sanction, if any, to impose, taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions, and the

principle of proportionality. It had also listened to legal advice from the Legal Adviser, which it accepted.

63. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no order.
64. The Committee was mindful of the fact that its role was not to be punitive, and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in ACCA, and to declare and uphold proper standards of conduct and performance.
65. The Committee considered whether any mitigating or aggravating factors featured in this case.
66. The Committee accepted that there were no previous findings against Miss Zheng.
67. The Committee noted that Miss Zheng had made some partial admissions in relation to her conduct at the exam, and, whilst the Committee had found that she had intended to use unauthorised material to gain an unfair advantage, this was not a sophisticated course of conduct. Finally, the allegation related to an isolated incident.
68. The Committee had not been provided with any testimonials or references as to Miss Zheng's character.
69. As for aggravating features, on the basis of the findings, it had been established that Miss Zheng's behaviour had been premeditated and deliberate. She had taken notes into an exam, which were relevant to that exam, with the intention of using them to gain an advantage over other students who were sitting the exam in compliance with the regulations. Miss Zheng had been found to be dishonest and the nature of her behaviour would undermine the reputation of ACCA and the profession.
70. The Committee concluded that neither an admonishment nor a reprimand would adequately reflect the seriousness of the Committee's findings.
71. The Committee then considered whether a severe reprimand would be an appropriate sanction. Again, taking account of the seriousness of its findings, the Committee did not consider that a severe reprimand would be sufficient or proportionate.

72. Miss Zheng had been found to have acted dishonestly in her conduct. The Committee was also concerned that, based on its findings, the objective of her dishonest conduct was to gain an unfair advantage which may have enabled her to pass the exam. It meant that, in this way, Miss Zheng may have gained her qualification when not competent to do so. Therefore, this was conduct which could have led to Miss Zheng being a risk to the public. It was also conduct which was fundamentally incompatible with being a student member of ACCA.
73. The Committee had considered whether there were any reasons which were so exceptional or remarkable that it would not be necessary to remove Miss Zheng from the student register but could find none.
74. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Miss Zheng shall be removed from the student register.

COSTS AND REASONS

75. The Committee concluded that ACCA was entitled to be awarded costs against Miss Zheng. The amount of costs for which ACCA applied was £5,398. All parts of the allegation, to include dishonesty, had been found proved. The Committee did not consider that the claim was unreasonable, but the hearing had taken less time than estimated. Therefore, the Committee reduced the amount claimed to £5,000.
76. Miss Zheng had not provided ACCA with any details of her means other than a remark that the financial status of her family was limited. Miss Zheng would have been warned at the outset of the importance of providing details of her means. In the absence of any information, the Committee had approached the issue of costs on the basis that Miss Zheng was able to pay any amount awarded.
77. In all the circumstances, and in exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £5,000.

EFFECTIVE DATE OF ORDER

78. The Committee decided that this order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

Ms Wendy Yeadon
Chair
21 May 2020